Proposed Rules for use of the Washington State Digital Archives
Summary of comments, suggestions, and questions received
Responses from State Archives staff

Authority

Suggestion: Cite the authority of the OSOS to promulgate these rules and the specific State laws these rules relate to.

Response:
RCW 40.14.020 - Authority

All public records shall be and remain the property of the state of Washington. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance with the provisions of this chapter. In order to insure the proper management and safeguarding of public records, the division of archives and records management is established in the office of the secretary of state. The state archivist, who shall administer the division and have reasonable access to all public records, wherever kept, for purposes of information, surveying, or cataloguing, shall undertake the following functions, duties, and responsibilities:

(1) To manage the archives of the state of Washington;

(2) To centralize the archives of the state of Washington, to make them available for reference and scholarship, and to insure their proper preservation;

(3) To inspect, inventory, catalog, and arrange retention and transfer schedules on all record files of all state departments and other agencies of state government;

(4) To insure the maintenance and security of all state public records and to establish safeguards against unauthorized removal or destruction;

1. RCW 40.14.020 (6) (a)(b)(c) (1957)

(6) To adopt rules under chapter 34.05 RCW:

(a) Setting standards for the durability and permanence of public records maintained by state and local agencies;

(b) Governing procedures for the creation, maintenance, transmission, cataloging, indexing, storage, or reproduction of photographic, optical, electronic, or other images of public documents or records in a manner consistent with current standards, policies, and procedures of the department of information services for the acquisition of information technology;

(c) Governing the accuracy and durability of, and facilitating access to, photographic, optical, electronic, or other images used as public records.

2. RCW 43.105.250
It is the intent of the legislature to encourage state and local governments to develop, store, and manage their public records and information in electronic formats to meet their missions and objectives. Further, it is the intent of the legislature for state and local governments to set priorities for making public records widely available electronically to the public. [1996 c]

3. RCW 40.14.027 - Findings -- 1994 c 193:

"The legislature finds that:

(1) Accountability for and the efficient management of local government records are in the public interest and that compliance with public records management requirements significantly affects the cost of local government administration;
(2) the secretary of state is responsible for insuring the preservation of local government archives and may assist local government compliance with public records statutes;
(3) as provided in RCW 40.14.025, all archives and records management services provided by the secretary of state are funded exclusively by a schedule of fees and charges established jointly by the secretary of state and the director of financial management;
(4) the secretary of state's costs for preserving and providing public access to local government archives and providing records management assistance to local government agencies have been funded by fees paid by state government agencies;
(5) local government agencies are responsible for costs associated with managing, protecting, and providing public access to the records in their custody.

4. RCW 40.14.030 - Transfer to State Archives
1) All public records, not required in the current operation of the office where they are made or kept, and all records of every agency, commission, committee, or any other activity of state government which may be abolished or discontinued, shall be transferred to the state archives so that the valuable historical records of the state may be centralized, made more widely available, and insured permanent preservation: PROVIDED, That this section shall have no application to public records approved for destruction under the subsequent provisions of this chapter.
When so transferred, copies of the public records concerned shall be made and certified by the archivist, which certification shall have the same force and effect as though made by the officer originally in charge of them. Fees may be charged to cover the cost of reproduction. In turning over the archives of his office, the officer in charge thereof, or his successor, thereby loses none of his rights of access to them, without charge, whenever necessary.

5. RCW 40.14.050 - State Records Committee (State Archivist, Attorney General, State Auditor, Office of Financial Management
It shall be the duty of the records committee to approve, modify or disapprove the recommendations on retention schedules of all files of public records and to act upon requests

to destroy any public records: PROVIDED, That any modification of a request or recommendation must be approved by the head of the agency originating the request or recommendation.

6. RCW 40.14.060 – State Records

(1) Any destruction of official public records shall be pursuant to a schedule approved under RCW 40.14.050. Official public records shall not be destroyed unless:

(a) Except as provided under RCW 40.14.070(2)(b), the records are six or more years old;

(b) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly if lesser federal retention periods for records generated by the state under federal programs have been established; or

(c) The originals of official public records less than six years old have been copied or reproduced by any photographic or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

(2) Any lesser term of retention than six years must have the additional approval of the director of financial management, the state auditor and the attorney general, except when records have federal retention guidelines the state records committee may adjust the retention period accordingly. An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the state records committee for approval or disapproval of the change to a retention period of six years.

Recommendations for the destruction or disposition of office files and memoranda shall be submitted to the records committee upon approved forms prepared by the records officer of the agency concerned and the archivist. The committee shall determine the period of time that any office file or memorandum shall be preserved and may authorize the division of archives and records management to arrange for its destruction or disposition.

7. RCW 40.14.070 - Local Govt. Records

(2)(a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the Local Records Committee.

8. RCW 40.16.010 - Injury to public record

Every person who shall willfully and unlawfully remove, alter, mutilate, destroy, conceal, or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office, or with any public officer, by authority of law, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both.

Every officer who shall willfully and unlawfully remove, alter, mutilate, destroy, conceal, or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office, or with any public officer, by authority of law, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both.

9. RCW 40.20.020 - Reproduction by film or photograph

The head of any business or the head of any state, county or municipal department, commission, bureau or board may cause any or all records required or authorized by law to be made or kept by such official, department, commission, bureau, board, or business to be photographed, microphotographed, reproduced on film, or photocopied for all purposes of recording documents, plats, files or papers, or copying or reproducing such records. Such film or reproducing material shall be of permanent material and the device used to reproduce such records on such film or material shall be such as to accurately reproduce and perpetuate the original records in all details, and shall be approved for the intended purpose: PROVIDED, That the state archivist shall approve such material for state records use: PROVIDED, FURTHER, That the state auditor shall approve such material for use by local governmental subdivisions.

Costs

Comment: Costs (equipment, sorting, storage, licensing, and training) are too high.

Response:
Prior to this WAC, state and local government agencies were already required to retain all their public records (electronic and paper-based formats) for the minimum retention periods set out in records retentions schedules approved by the applicable records committee in accordance with RCW 40.14.
State and local government agencies that choose to conduct business transactions using email (thereby creating and receiving emails that are public records) are responsible for meeting their legal requirements under chapters 40.14 and 42.56 RCW for managing those public records in the same way that they are responsible for meeting their legal requirements to manage public records in other formats. An important aspect of an agency meeting their legal requirements is ensuring that they are adequately funding the compliance with those pre-existing legal requirements.
This WAC actively seeks to reduce the existing cost burden on state and local agencies for maintaining and preserving their archival electronic records by providing the mechanisms for agencies to transfer those archival records (and the costs associated with preserving them) to Washington State Archives.

Comment: Smaller cities and local government offices do not have the staff or financial resources available to comply with the proposed rules. They would need to move to larger systems and they do not have the resources to do so.

Response:
Prior to this WAC, state and local government agencies were already required to retain all their public records (electronic and paper-based formats) for the minimum retention periods

set out in records retentions schedules approved by the applicable records committee in accordance with RCW 40.14.
State and local government agencies that choose to conduct business transactions using email (thereby creating and receiving emails that are public records) are responsible for meeting their legal requirements under chapters 40.14 and 42.56 RCW for managing those public records in the same way that they are responsible for meeting their legal requirements to manage public records in other formats. An important aspect of an agency meeting their legal requirements is ensuring that they are adequately funding the compliance with those pre-existing legal requirements.
This WAC actively seeks to reduce the existing cost burden on state and local agencies for maintaining and preserving their archival electronic records by providing the mechanisms for agencies to transfer those archival records (and the costs associated with preserving them) to Washington State Archives.

Comment: The methodology that will be used to insure that all records are searchable and retrievable must be stipulated and evaluated for its resource impacts prior to being finalized.

Response:
"Searchable and retrievable" does not mean full text searchibility – the record simply must be locatable. An agency that does not keep records locatable and retrievable for the minimum retention period is in violation of RCW 40.14.
Metadata is a key component of making a record searchable and retrievable.

Question: What is the cost of reviewing each e-mail message, indicating the statutory authority for such confidentiality prior to transmission to the archives?

Response:
Proper organization and management of e-mail prior to transmission to the Digital Archives significantly reduces the cost to review records to an insignificant amount.

Comment: There will be a workload and cost increase to insure compliance with the conditions of the Transmittal Agreement not only in terms of metadata tagging and other transmittal documentation but constant attendant training and monitoring.

Response:
Metadata tagging has been deleted from section 140. The proper management of public records is a pre-existing requirement under RCW 40.14 and 42.56. This WAC does not burden agencies beyond existing requirements.

Question: What are the cost implications for website management requirements?

Response:
State and local government agencies that choose to communicate business information using websites (thereby creating websites that are public records) are responsible for meeting their

legal requirements under chapters 40.14 and 42.56 RCW for managing those public records in the same way that they are responsible for meeting their legal requirements to manage public records in other formats. An important aspect of an agency meeting their legal requirements is ensuring that they are adequately funding the compliance with those pre-existing legal requirements.

Comment: Website management will cost our agency salary equivalents of 3 additional FTE's to accomplish additional required metadata tagging of web pages.

Response:
Metadata tagging has been deleted from section 140.

Comment: There are often higher costs for accessing paper public records. Factoring in driving, parking, etc. Electronic access is easier and cheaper for the public.

Response:
We strongly agree; reducing public encumbrance is a primary motivation for implementing WAC 434-662.

Training / Help with Transfer

Question: Will there be training/assistance?

Suggestion: A post-adoption work group to help with implementation would be helpful.

Suggestion: Training should be provided to help employees understand what is archival and what is not.

Question: Can we receive confirmation we're correctly complying with rules for use of the Digital Archives?

Question: What are agencies using (other than the State or agency Retention Schedule) to determine why and when they should digitally archive their materials?

Question: How does an agency determine when to transfer a database with associated hardware/software to digital archives? Or do Digital Archives only accept the "records"?

Response:
The State Archives (SA) will conduct at a minimum two training seminars a year to support the implementation of the Digital WAC. One seminar will be for partners located on the Eastside of the state and the other seminar will be for partners located on the Westside of the state. The dates of these training seminars are yet to be determined. As always the SA staff will continue to make themselves available for any questions or concerns regarding the

transfer of partner data. Additionally, a post-adoption work group will be formed to help with the implementation of archiving e-mail and archiving websites. The majority of this work group will consist of SA Staff and Records Management Staff.
The two training seminars that the SA Staff will give will also contain Records Management Staff. This should help educate partners in understanding what is archival and what is not. Agencies should still use the state and local retention schedules to determine when they should archive their materials. A record that is digital is just in a different format from a paper record. The retention schedules should drive when to archive the record. When agencies are questioning if they are complying with the rules for use of the Digital Archives, they should contact the SA directly for answers. If an agency has questions on when to transfer a database with associated hardware/software to the SA, they should contact their Local Records Officer. If they are unable to get a response from their Local Records Officer, they can contact a member of the State Records Committee.

Archival or not?

Comment: The requirement to permanently preserve any record deemed "archival" is a recurring theme in WAC 434-662. However, it is unclear how it is that something would be deemed archival and how the agency in question is allowed input in that process or notified.

Response:
The State Archivist determines which records series are to be designated as archival. Archivists and records management staff from Washington State Archives assist the State Archivist in these decisions.
Agencies are able to suggest that particular records series should be designated as archival or not during the development of records retention schedules. Agencies are also able to request that the State Archivist adds or removes the archival designation from a particular existing records series.
Agencies are notified of records series that have been designated as archival through the inclusion of the archival designation on the approved records retention schedules. Copies of unique records retention schedules are provided to the records officer of the agency. General records retention schedules are available via the Washington State Archives website.

Printing electronic public records

Suggestion: If an agency has determined that its primary records are paper, then it should be allowed to print electronic public records to maintain continuity of access.

Response:

Agencies can still print electronic records to interfile with paper records provided that born digital electronic records (such as emails) are retained in their electronic format for the minimum retention period as specified in the appropriate records retention schedule.

Question: When is a record considered an 'electronic record'? If the document is meant for paper distribution, is the electronic format it originated in supposed to be retained in electronic as well as paper form?

Response:
A document becomes a record when it becomes evidence of a transaction of business. For example, if a word processing application is used to generate a letter or the minutes of a meeting where it is intended to be printed and signed, then the letter/minutes become a record when they are signed. Therefore it is a paper record, although an electronic document was used to generate the paper record. The electronic document is not the record and does not need to be retained for the minimum retention period (although agencies will usually keep the document to be able to "reuse" the electronic document to generate other records).
On the other hand, if document is distributed electronically, such as an email outlining a policy directive, then it is an electronic record because it was electronic when it became the evidence of the business transaction.

Question: What happens in the case where there is a printed report, an electronically disseminated copy of that report, a supplemental CD or DVD of technical data, and a hard copy ephemera?

Response:
In cases such as this, agencies must carefully consider what actually constitutes the record of the report, the records of its distribution, and what are secondary copies.

Question: If there is a financial report you produce that you need to keep for 6 years – could you maintain the hardcopy for six years but maintain the digital version or the data used to create the report additional time? Could you maintain the hardcopy for a shorter time provided you kept the digital version or the data to recreate the digital and hardcopy for the required six years?

Response:
The answer to this question depends on what the records retention schedule specifies based on what constitutes the record. Sometimes a report is required to be retained as it forms the evidence (ie the record) at a specific fixed point in time (a snapshot). Where systems are able to "recreate" the record at a specific fixed point in time, then it may not be necessary to retain the printed report. This issue needs to be carefully examined when records retention schedules are being developed and implemented.

Comment: The implication that hardcopy records can more suitably be preserved electronically is open to serious question.

Response:
It is not the intention of this WAC to imply that hardcopy records can more suitably be preserved electronically. The intention of this WAC is to ensure that born digital (as opposed to digitized) electronic records are preserved for their minimum retention period (including indefinitely in the case of archival electronic records). Preserving electronic records for their minimum retention period also involves retaining parts of the record (such as metadata, formulas in spreadsheets, etc) that may be lost in converting the electronic record to a paper format.
WAC 434-663 relates to the digitization of public records and the early destruction of original paper records that have been digitized.

Comment: While the point is taken, the citation of Zubulake in your FAQ is somewhat misleading. Whether something is to be produced in native format or not is a matter of negotiation between parties (see current FRCP) and not an outright legal requirement as you imply.

Response:

Public Disclosure Act Issues

Agencies that print out electronic records as a retention strategy seldom invest the time and money needed to index them so that individual documents are retrievable. This practice flies in the face of RCW 42.56.070 which requires "…agency shall maintain and make available for public inspection and copying a current index providing identifying information.." to aid agency records managers and requestors to locate documents being requested under the Public Disclosure Act. Agency public disclosure rules must describe their indexing system including requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index.

The Public Disclosure Act obligates an agency to provide nonexempt "identifiable...records." RCW 42.56.080. An "identifiable record" is essentially one that agency staff can "reasonably locate." WAC 44-14-04002(2). Therefore, a general summary of the "identifiable record" standard as it relates to electronically locating public records is that the act requires an agency to provide a nonexempt "reasonably locatable" record. This does not mean that an agency can decide if a request is "reasonable" and only fulfill those requests. Rather, "reasonably locatable" is a concept, grounded in the act, for analyzing electronic records issues. In general, a "reasonably locatable" electronic record is one which can be located with typical search features and organizing methods contained in the agency's current software. The Attorney General has recommended a Model WAC (WAC 44-14-05002) for all agencies that incorporates these concepts for electronic records.

A "reasonably locatable" electronic record has metadata that can be searched with the proper software. Printing electronic records on paper destroys the metadata and searchabilty. Without those features, the paper record is no longer a readily "identifiable record" that an agency can easily find and readily produce upon request. An analysis of current case law dealing with electronic records suggests the courts are no longer sympathetic to agencies who

say they cannot provide "identifiable electronic records" because the agency destroyed the electronic copies, related metadata and search software, but did save archive boxes full of printed copies with no index to find items.

Washington State Court Rule Issues

Washington State Court Rules of Evidence Rule 1005 generally allow the contents of an official recorded record to be proved by a photocopy copy, certified as correct by the official record custodian, or testified to be correct by a witness who has compared it with the original. For non-recorded documents, Rule 1002 generally requires the original document to be produced. Rule 1003 makes duplicates, such as photocopies, admissible. However, Rule 1003 also requires production of the original document if there is any question of authenticity.

Bottom-line: Failure to keep the original copy of an electronic record may pose serious evidentiary issues if the authenticity of the photocopy is challenged. For example, an employee charged with criminal activity may be able alter an email on his or her PC workstation, and print out a copy of the altered document, but the average employee typically does not have access nor the passwords to alter copies retained on an agency Exchange email server. If witness challenges a printed copy as a forgery, how can authenticity be verified if the IT staff destroyed email on the Exchange server?

Federal Rules of Civil Procedure Issue

The Federal Rules of Civil Procedure are now more restrictive and proscriptive than Washington State Court rules.

On December 1, 2006 amendments to the Federal Rules of Civil Procedure (FRCP) became effective to address discovery issues that are unique to electronic records. Unless the other side expressly agrees or the court orders it, you can no longer produce paper printouts of documents when the originals you hold are electronically searchable.

Per the new amended FRCP Rule 34(b), your opponent in litigation selects the form or forms in which you produce electronically stored information (sometimes referred to as ESI). If you do not produce as designated, you must produce as "ordinarily maintained" in the course of business or in a reasonably usable form. "Ordinarily maintained" generally means in its "native" electronic format since that is how the business used such records in the course of business.

One can no longer produce electronically stored information in a form different from that selected by the requesting party unless you advise them of the form or forms you'll supply and afford them an opportunity to object and seek assistance of the court. An unceremonious "here it is" and pointing to a mountain of paper is no longer considered acceptable method of providing electronically stored information in Federal Court.

The Committee Notes for the new Federal eDiscovery rule say: "If the responding party ordinarily maintains the information it is producing in a way that makes it searchable by electronic means, the information should not be produced in a form that removes or significantly degrades this feature." This is generally construed to mean one can no longer produce "naked" .TIF or PDF files stripped of searchable data layers; nor can printouts of email be produced unless that is what the requesting wants.

FRCP 34(b) says the producing party must deliver electronic documents in the specified form or make an objection stating the reasons it won't and the form or forms it intends to provide. Alternate forms must be either those in which the electronically stored information is ordinarily maintained or that are "reasonably usable." This is new leverage for requesting parties, who can request electronic records that are electronically searchable.

An example of a recent case dealing with the above issues:

Case Citation:	John B. v. Goetz, 2007 WL 3012808 (M.D. Tenn. Oct. 10, 2007) and Oct. 9, 2007 Memorandum (Not available on Westlaw)
Nature of Case:	Class action against various Tennessee state agencies on behalf of roughly 550,000 children entitled under federal law to medical services
Electronic Data Involved:	ESI
E-Discovery Issue:	Faulting defendants' preservation and production methods, court ordered defendant state agencies to produce ESI using agreed search terms, designated key custodians, and specified time period, and ordered that production of responsive ESI must include all metadata and all deleted information on any computer of designated key custodians; court further ordered that plaintiffs' computer expert "shall be present for the [d]efendants' ESI production and shall provide such other services to the defendants as are necessary to produce the metadata, as ordered by the Court."
Case Summary:	http://www.ediscoverylaw.com/2007/11/articles/case-summaries/court-orders-defendant-tennessee-state-agencies-to-produce-responsive-esi-including-all-metadata-and-deleted-information-potentially-shifts-costs-to-defendants-as-sanction-for-failure-to-implement-effective-litigation-hold-and-other-discovery-miscues/
Attributes:	FRCP 26(b)(2)(B) "Not Reasonably Accessible"; FRCP 34(b) Procedure or Format; FRCP 26(b)(5)(B) or FRE 502; Motion to Compel; Third Party Discovery; *Data Preservation*; Cost Shifting; Records Retention Policy; Spoliation; Backup Media Recycling; Keyword Search; Backup Tapes; Format of Production; Privilege; *Deleted Data*; Metadata; Lack of Cooperation / Inaccurate Representations

Format

Comment: The proposed rules don't make the fine distinction that archivists have always made regarding non-electronic media and have been developing in regard to electronic media for the past 20 years: 1) format seems subordinate to content; 2) electronically published/disseminated as opposed to electronic delivery; 3) valid uses of migration and emulation.

*see combined response below

Comment: The proposed rules do not respect the integrity of a file unit.

*see combined response below

Question: Would this WAC require that the county break up that historic record by sending the electronic copy of the report and the CD/DVD to the State Digital Archives while it kept the printed report and the hard copy ephemera?
Comment: This goes against every archival principle out there and would be a detriment to historical research.

*see combined response below

Comment: These proposed rules tend to look at electronic records as databases. The vast majority of data will likely be sent as flat files. How the data is sourced to the archive and how it is assembled for access implies several potential concerns and issues not clearly addressed in these proposed rules.

Response:
The format of the data being transferred to the Digital Archives (DA) varies per partner and record series. The DA works closely with each partner as records are ready for transfer. The majority of records that are transferred from our partners are transferred via Secure File Transfer Protocol(SFTP) or hard drive. This includes but is not limited to extracts from recording systems, databases, entire websites, etc. The DA will take a digital fingerprint prior to transferring the files to ensure the integrity of the data. The DA also uses the MD5 hash to maintain the integrity of the files. The records being transferred are born digital, and the DA addresses the integrity and security of data with the transfer mechanism. Since the records are born digital, the archives do not require that a separate paper copy of the record be transferred as well.

Records Series

Suggestion: The concept of 'records series' needs to be embedded in and color the proposed rules.

Response:
The concept of a "record series" is already implied throughout the WAC. Wherever the WAC describes retaining records in accordance with an approved records retention schedule, the concept of a "records series" is implied. Adding the term "records series" to the WAC will not add to its clarity and may further complicate the issues.

Redaction

Comment: Archives staff confirmed un-redacted material is available to the public via the Digital Archives.

Response:
The Memorandum of Understanding (MOU) is our agreement with our partner agency that allows the transfer of their data to the Digital Archives (DA). The DA supports five levels of locking or managing exceptions this includes locking the image, locking the title, locking the record series, locking a specific field of metadata, and locking a document code. The place to manage this exception is in the MOU. The DA will maintain a preservation copy of the original (unredacted) record and create an "access" copy that includes the redaction for public access. The copy for public access is known as the "presentation" record.

Comment: It is clear that the Washington State Archives does not have the staff to review records for legal exemptions.

Response:
Washington State Archives already handles the public disclosure requests (including the managing of exceptions) for access to records in other formats (such as paper) that have been transferred to the Archives' legal and physical custody.
Agencies, by identifying any confidential information or records and the statutory authority for such confidentiality as part of the transmittal agreement in accordance with section 090, can greatly assist Washington State Archives in providing appropriate access to the records in custody of the Archives.

Question: Some of our electronic public records contain sensitive information that needs to be redacted. What are our options for handling this material?

Response:
There are third party tools on the market that support online redaction. The DA has yet to research these tools. Due to our lack of research, we are unable to suggest a redaction tool.

Comment: If our agency were to archive materials with the State, it is unlikely the Archivists would have the expertise to identify records or portions thereof which could not be legally released.

Response:
Washington State Archives already handles the public disclosure requests (including the managing of exceptions) for access to records in other formats (such as paper) that have been transferred to the Archives' legal and physical custody.
Agencies, by identifying any confidential information or records and the statutory authority for such confidentiality as part of the transmittal agreement in accordance with section 090, can greatly assist Washington State Archives in providing appropriate access to the records in custody of the Archives.

Comment: Our agency, and our agency only, has the knowledge and expertise to archive records containing sensitive information.

Response:
Washington State Archives already handles the public disclosure requests (including the managing of exceptions) for access to records in other formats (such as paper) that have been transferred to the Archives' legal and physical custody.
Agencies, by identifying any confidential information or records and the statutory authority for such confidentiality as part of the transmittal agreement in accordance with section 090, can greatly assist Washington State Archives in providing appropriate access to the records in custody of the Archives.

Comment: Release of our public records with proprietary value would result in a public loss and a private gain

Response:
Washington State Archives already handles the public disclosure requests (including the managing of exceptions) for access to records in other formats (such as paper) that have been transferred to the Archives' legal and physical custody.
Agencies, by identifying any confidential information or records and the statutory authority for such confidentiality as part of the transmittal agreement in accordance with section 090, can greatly assist Washington State Archives in providing appropriate access to the records in custody of the Archives.

Comment: Archives staff members do not have the legal right to view our records protected under FERPA and HIPPA.

Response:
Washington State Archives already handles the public disclosure requests (including the managing of exceptions) for access to records in other formats (such as paper) that have been transferred to the Archives' legal and physical custody.
Agencies, by identifying any confidential information or records and the statutory authority for such confidentiality as part of the transmittal agreement in accordance with section 090, can greatly assist Washington State Archives in providing appropriate access to the records in custody of the Archives.

Comment: The release of un-redacted material removes safeguards against those who would use biological research information for nefarious reasons.

Response:
Washington State Archives already handles the public disclosure requests (including the managing of exceptions) for access to records in other formats (such as paper) that have been transferred to the Archives' legal and physical custody.
Agencies, by identifying any confidential information or records and the statutory authority for such confidentiality as part of the transmittal agreement in accordance with section 090, can greatly assist Washington State Archives in providing appropriate access to the records in custody of the Archives.

Comment: If a government entity is required to redact certain elements of documents it is imperative that the Digital Archives replace any document requiring redaction with the redacted image or remove the image completely.

Response:
The Memorandum of Understanding (MOU) is our agreement with our partner agency that allows the transfer of their data to the Digital Archives (DA). The DA supports five levels of locking or managing exceptions this includes locking the image, locking the title, locking the record series, locking a specific field of metadata, and locking a document code. The place to manage this exception is in the MOU. The DA will maintain a preservation copy of the original (unredacted) record and create an "access" copy that includes the redaction for public access. The copy for public access is known as the "presentation" record.

State Government Network

Question: Will the OSOS establish a network connection with its Cheney location and the State's Government Network (SGN)?

*see combined response below

Comment: The OSOS should request funding to connect its site to the SGN.

Response:
At this time, there is no advantage to using the SGN for the Internet Service Provider (ISP) to connect the Digital Archives to the Internet. The quote we received three years ago from DIS was much more expensive than using Century Tel to connect to the Northwest Open Access Network (NoaNet). Since our partners (Partners are defined as agencies that we have a signed Memorandum of Understating (MOU) that send us electronic archival data to preserve and provide access) include State, County, City, district and other States – using the SGN would restrict the functionality and access to the Digital Archives. DIS has made it clear they do not want us to "dual connect" to multiple ISP providers, which could be used by attackers to create an un-monitored back door to the SGN network.

Comment: The OSOS should request funding to connect its site to the SGN.

'In House' Storage

Question: Who is required to use the Digital Archives?

*see combined response below

Question: Who has the *option* of using the Digital Archives?

*see combined response below

Question: Why do State agencies with their own archiving system have to use the Digital Archives?

*see combined response below

Comment: We are a State agency that can better archive and protect our own electronic public records.

Response:
The Digital Archives exists to preserve archival electronic public records for both State and local governments. Agencies which choose not to use the Digital Archives are still required to maintain electronic public records in accordance with the approved records retention schedules. State or local governments may be relieved of the obligation to permanently retain archival electronic public records by transmitting records and associated metadata to the Digital Archives.
In Section 434-662-010 "and/or" language has been added to indicate using the Digital Archives to meet existing electronic public record requirements is optional. If an agency chooses not to use the Digital Archives for storage of archival electronic public records, the agency must still maintain those records to the standards established in Chapter 434-662 WAC.

State v. Local Requirements

Suggestion: Provide clear language that specifies non-State agencies are not required to use the Digital Archives. *See RCW 27.48.070, RCW 36.22.170, and WAC 434-615-030.

Response:
The Digital Archives exist to preserve electronic public records for both State and local governments. Local governments which choose not to use the Digital Archives are still required to maintain electronic public records in accordance with the Local Records Committee Retention Schedule. State or local governments may be relieved of the obligation to permanently retain archival electronic public records by transmitting records and associated metadata to the Digital Archives
In Section 434-662-010 "and/or" language has been added to indicate using the Digital Archives to meet existing electronic public record requirements is optional. If an agency chooses not to use the Digital Archives for storage of archival electronic public records, the

agency must still maintain those records to the standards established in Chapter 434-662 WAC.

Suggestion: Provide clarification that the proposed rules are only applicable if you are using the Digital Archives.

Response:
In Section 434-662-010 "and/or" language has been added to indicate using the Digital Archives to meet existing electronic public record requirements is optional. If an agency chooses not to use the Digital Archives for storage of archival electronic public records, the agency must still maintain those records to the standards established in Chapter 434-662 WAC.

Question: Are the WACs applied the same way for essential and **non-essential** agencies, commissions, and boards?

Response:
Yes. The public records law applies to all State and local agencies without distinction.

Question: Are there circumstances under which a State agency could gain exemption from use of the Digital Archives?

Response:
No. If there is pending/ongoing litigation, an agency should retain their records relevant to the litigation, and then submit them to the Digital Archives when those records are no longer in use.
RCW 40.14.020 states the following:
… The state archivist, who shall administer the division and have reasonable access to all public records, wherever kept, for purposes of information, surveying, or cataloguing, shall undertake the following functions, duties, and responsibilities:

(1) To manage the archives of the state of Washington;

(2) To centralize the archives of the state of Washington, to make them available for reference and scholarship, and to insure their proper preservation;

(3) To inspect, inventory, catalog, and arrange retention and transfer schedules on all record files of all state departments and other agencies of state government;

(4) To insure the maintenance and security of all state public records and to establish safeguards against unauthorized removal or destruction;

Federal Requirements

Suggestion: Provide information on Supreme Court Case involving case from NY.

Response:

Zubulake v. USB Warburg, 217 F.R.D. 309 (S.D.N.Y. 2003), 220 F.R.D. 212 (S.D.N.Y. 2003), and 229 F.R.D. 422, 433-34 (S.D.N.Y. 2004), began as a typical gender discrimination case against a former employer. The case generated five separate opinions regarding the discovery of electronic data, resulting in a $29.3 million verdict for the Plaintiff.
In the final decision, Judge Scheindlin imposed sanctions on USB Warburg for willfully destroying relevant email messages and back-up tapes it had a duty to preserve during the course of litigation. The Court further ordered the defendant to pay the plaintiff's attorneys fees in her quest for the missing evidence, granted the plaintiff's request for additional discovery and permitted the jury to make a negative inference about certain emails which were deleted by the company.
The Zubulake case is generally considered the first definitive benchmark case in the United States which deals with a variety of electronic discovery issues. It is the defining case law in Federal Court and most state courts have followed it various rulings. Among the guidance offered by Zubulake I-V:

- A party has a duty to preserve electronic records during designated retention periods.
- A party has a duty to preserve electronic evidence during the course of litigation even if the retention period has expired.
- Attorneys are obligated to take affirmative steps (such as placing a "litigation hold" on documents held by key players) to ensure all relevant documents are discovered, retained and produced, and must counsel their clients accordingly.
- The disclosing party can no longer assume it can shift the costs of restoring "inaccessible" back up tapes to the requesting party.
- Back-up tapes can be sampled to determine whether the burden or expense of satisfying the entire request is proportionate to the likely benefit.
- If a party willfully destroys electronic evidence, the court or a jury may be permitted to draw an adverse inference that the evidence deleted was incriminating.
- Sanctions (costs and attorney fees) may be imposed by a court on a party willfully destroying electronic evidence.

Suggestion: Provide information on Sarbanes Oxley Act.

Response:
The Sarbanes-Oxley Act of 2002 (often shortened to *SOX*) was passed by Congress and signed into law on July 30, 2002. The law established new and enhanced financial reporting, auditing and disclosure standards for all U.S. public company boards, management, and public accounting firms.
The Act does not apply to privately-held companies or to governmental agencies. The act is administered by the Securities and Exchange Commission (SEC) which regulates publically-held companies.
At technology and financial conferences, whenever "electronic records" are discussed, the issue of complying with Sarbanes-Oxley inevitably comes up. That is because the law not only affects the financial side of corporations, but also affects corporate IT departments whose job it is to store a corporation's electronic records. The Sarbanes-Oxley Act states that all business records, including electronic records and electronic messages, must be saved for

"not less than five years." The consequences for non-compliance are fines, imprisonment, or both. Corporate IT departments were faced with the challenge of creating and maintaining a corporate records archive in a cost-effective fashion that satisfies the requirements put forth by the new law.

Language / Layout

Question: Will you apply the Governor's Plain Talk Initiative to the proposed rules?

*see combined response below

Suggestion: The rule should only have one number and subsequent letters to allow stakeholders to view it all at once.

*see combined response below

Suggestion: Do not use technical terms unfamiliar to persons who will have to follow the rules.

Response:
The proposed rules are of a technical nature. Applying the Governor's Plain Talk Initiative or layman's terms would compromise subject accuracy and would result in less comprehension. Additionally, the layout of separate numerical sections better divides distinct topics of the proposed rules; the Office of the Secretary of State feels the present layout aids management and search ability.

Timeline

Question: Is there a timeline for when the proposed rules take effect?

Response:
Archives plans to have the proposed rules take effect January 1, 2009, and sections 140 and 150 of the proposed rules take effect January 1, 2010.

Comment: A phased execution would help with compliance. It would allow entities with fewer resources to plan, seek resources, and learn from entities already in compliance.

Response:
We agree, but remind agencies that preservation of electronic public records is current law. Archives plans to have the proposed rules take effect January 1, 2009, and sections 140 and 150 of the proposed rules take effect January 1, 2010.

Archives staff members are available and happy to help any agency that would like assistance.

Question: When did the requirement that electronic public records must be maintained in original (electronic) format take effect?

Response:
RCW 40.14, pertaining to the preservation and destruction of public records, was first passed in 1957.
Section 010 of the statute states: As used in this chapter, the term "public records" shall include any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, **regardless of physical form or characteristics**, and including such copies thereof, that have been made by or received by any agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW 40.14.100. (emphasis added)
Section 060 of the statute states: (1) Any destruction of official public records shall be pursuant to a schedule approved under RCW 40.14.050. Official public records shall not be destroyed unless: …
Since a public record is determined by content, and not physical form and an agency may not destroy a public record except in accordance with an approved retention schedule, the requirement has been in effect since 1957.
The Local Records Committee clarified that printing an electronic record is not a substitute for retaining an electronic public record in its original format. This decision was made at their May 2007 meeting.

Comment: I understand that these new WACs may go into effect as early as May 1st, 2008. For our county, assuming that we could fund and marshal the resources, both money and staffing, necessary to tackle the changes required to implement these new WACs, it would take perhaps a year to reach full implementation. We are a relatively small county with a small staff in Information Services. Our county has been experiencing a sluggish or recessionary economic climate for a couple years.
Considering the potentially significant financial and operational impact that these new WACs will have on our county, I urge you to make an exception for smaller counties. If you feel you must implement these new requirements, then at least provide an implementation period of at least one year.

Response:
The requirement to preserve electronic public records is not a new requirement. The proposed rules establish standards for retention and explain procedures for transferring electronic public records to the Digital Archives.
A cost/benefit analysis will accompany the final adoption of the proposed rules. This may be helpful to determine budget requests needed to gain compliance with the law.
Archives plans to have the proposed rules take effect January 1, 2009, and sections 140 and 150 of the proposed rules take effect January 1, 2010.

Archives staff members are available and happy to help any agency that would like assistance.

Process

Question: Would you consider scrapping these proposed rules and starting over?

*see combined response below

Question: How can we be assured our concerns will be addressed?

Response:
The possibility of withdrawing the proposed rules was considered and rejected. Though the process has been long, the Office of the Secretary of State has been in compliance with rule-making rules and has made multiple attempts to solicit and include stakeholder comments. Under RCW 34.05.325 a concise explanatory statement in response to all comments, questions, and suggestions received must be provided to all persons who have submitted remarks. This document meets that requirement, assuring all comments are addressed.

Section 010
Purpose

Suggestion: In section, WAC 434-662-010: to "transferred to the Washington state digital archives for permanent retention." add "or another designated repository as per RCW 27.48.010, RCW 36.22.170 and WAC 434-615-030." These rules should clearly indicate they apply only to material submitted to the DA and do not apply to local governments unless they opt to participate.

Response:
In Section 434-662-010 “and/or” language has been added to indicate using the Digital Archives to meet existing electronic public record requirements is optional. If an agency chooses not to use the Digital Archives for storage of archival electronic public records, the agency must still maintain those records to the standards established in Chapter 434-662 WAC.

Suggestion: The term “securely preserved” needs to be defined in more specific terms. Comment: The proceeding rules do not address or define policies, standards, operational practices and legal controls necessary to provide assurance for information integrity and protection.

Response:
Section 060 contains information regarding policies, standards, operational practices and legal controls necessary to securely preserve an electronic public record.

Comment: The purpose statement confounds the issue of preserving public records which are created electronically with the issue of providing access to redundant, digital surrogates of analog originals. These are separate issues which should be treated separately.

Response:
We agree these are separate issues. WAC 434-662 pertains to born digital and digitized records. WAC 434-663 pertains to redundant, digital surrogates of analog originals. Additionally, the purpose statement has been revised to read: Pursuant to the provisions of chapters 40.14, ~~and~~ 42.56, and 43.105.250 RCW, the rules contained in this chapter are intended to ensure that electronic public records ~~that have archival value~~ are securely preserved for their minimum retention period for present and future access and/or are transferred to the Washington state digital archives for ~~permanent~~ retention so that valuable legal and historical records of the state may be centralized, made more widely available, and ~~insure permanent preservation~~ permanently preserved.
We believe the updated wording doesn't confuse the difference between WAC 434-662 and WAC 434-663.

Comment: Lost in today's enthusiasm for all things electronic and the associated notion of "access to everything easily" are significant risk issues, potential liabilities (for both the State Digital Archives and the entities that transfer the data to it), administrative services, and control costs associated with protecting sensitive data.

Response:
We believe there is significant risk in not preserving electronic public records in digital format. The cost/benefit analysis addresses the financial risks of destroying electronic public records. Additionally, RCW 40.14 declares it illegal to destroy public records outside of their approved retention schedule(s).

Comment: This implies that the agency will need to bring in an imaging system and many papers designated "archival" converted from paper to digital.

Response:
That is not the intent of the section. The Washington State Archives continues to take paper records.
The purpose statement has clarified to read: Pursuant to the provisions of chapters 40.14, 42.56, and 43.105.250 RCW, the rules contained in this chapter are intended to ensure that electronic public records are securely preserved for their minimum retention period for present and future access and/or are transferred to the Washington state digital archives for retention so that valuable legal and historical records of the state may be centralized, made more widely available, and permanently preserved.

Section 020

Definitions

Suggestion: Four terms in this section also are defined in chapter 434-610 WAC (archival value, public records, retention period, and records retention schedule). Because the proposed definitions differ slightly from terminology in the existing rule, you might consider duplicating them for consistency, or updating the existing rule to include the definitions outlined in this proposal.

Response:
The definitions for "public records", "retention period" and "records retention schedule" in this WAC are consistent in meaning with the definitions in WAC 434-610. Defintions contained in 434-662-020 reflect a refinement and improvement over definitions contained in 434-610 WAC. The Office of the Secretary of State will update 434-610 WAC to contain consistent definitions with 434-662 WAC.
This WAC defines "archival value" while WAC 434-610 defines "archival records" which are not the same (archival records have archival value).

Suggestion: A definition of 'agency' should be added to this section.

Response:
The Office of the Secretary of State has added the definition of "agency" as contained in 434-610 WAC.
"Agency" means any department, office, commission, board, or division of state government; and any county, city, district, or other political subdivision or municipal corporation or any department, office, commission, court, or board or any other state or local government unit, however designated.

Comment: 'Archival Value' – Several local government agencies, State agencies, and academic institutions have their own archives program that identify (and are better suited to identify) which records are historically valuable rather than the State Archives.

Response:
Washington State Archives' primary function is to identify, preserve and make available the public records of state and local governments of continuing (archival) value. Washington State Archives is funded and staffed by professionals to carry out that role so that state and local agencies do not need to allocate their resources away from their primary functions in order to maintain an archive. Washington State Archives always welcomes assistance from agency staff with expertise in identifying public records which are historically valuable.

Suggestion: Provide a very clear definition of 'archival value' so as to not be overly burdensome.

Response:

Washington State Archives' primary function is to identify, preserve and make available the public records of state and local governments of continuing (archival) value. Washington State Archives is funded and staffed by professionals to carry out that role so that the need to retain records of archival value is not overly burdensome for state and local agencies.

Suggestion: 'Archival Value' … add "or are designated such by statute" to the end of the definition.

Response:
The State Archivist considers legal requirements such as those specified by statute when designating records series as archival. The language has been added for clarification of another tool used to determine archival value.

Suggestion: The term 'indefinite' in the definition 'Archival Value' needs closer review.

Response:
The Office of the Secretary of State has deleted the word "indefinite" and replaced it with the term "long term." The intent of the original language was not to imply infinite preservation. "Long term" is a clearer representation of intent.

Comment: Under the term 'Authentic' the term "authentication" is defined. It should be listed separately and its definition needs more work and is potentially confusing. The standard technology industry definition for "authentication" is something entirely different. If this is about electronic data storage, management and protection, it is strongly suggested that technology industry definitions should be used first so as not to cause confusion. Criteria for establishing authenticity have not been sufficiently defined to enable compliance.

Response:
"Authentic" and "authentication" are two separate definitions. "Authentication" will have an 'indent' before it in the final version of the rules to make the separation clear.
The definition for "authentication" contained in 434-662 WAC is a legal definition.

Question: The definition for 'authentic' is unsatisfactory and appears arbitrary. What are the criteria that will be applied to ensure a consistent determination?

Response:
If records used in the conduct of business are stored in a secure environment where the agency has documented system security policies, they meet the general requirements for authenticity. Documenting the configuration and security requirements for accessing the system and its records is usually sufficient to prove the authenticity of the records.

Suggestion: 'Chain of Custody' – Not all documents end up being presented as evidence in a court of law, therefore the last part of the sentence should be changed. "… created until their disposal."

Response:
The Office of the Secretary of State has changed the language to:
"Chain of custody" means the documentation of the succession of offices or persons who held public records in a manner that could meet the evidentiary standards of a court of law until their proper disposition according to an approved records retention schedule.

Question: The definition for the term 'Chain of Custody' references when records were *created*. Is there value to including when records were *received* in this reference?

Response:
The Office of the Secretary of State has changed the language to:
"Chain of custody" means the documentation of the succession of offices or persons who held public records in a manner that could meet the evidentiary standards of a court of law until their proper disposition according to an approved records retention schedule.
This language change no longer specifies the creation of electronic public records, but refers to offices of persons who held public records. This more broadly covers creation, receipt, and transfer.

Comment: Within the IT security community, 'chain of custody' usually starts with the notice of an event. The wording in this definition suggests that there is an obligation to preserve the chain of custody all the time for every electronic file since we do not know which electronic files could become evidence in a court of law. This has many implications from a technology and operations point of view if that is the case.

Response:
Chain of custody is the ability to demonstrate that a record has been in the control and custody of an agency, protected from alteration or deletion by unauthorized third parties. In order to maintain chain of custody, it is important that records are stored, moved or transferred in a secure, controlled method in order to ensure that the records were not intercepted or modified by an unauthorized third party. Chain of custody can be demonstrated by documenting the security policies of the agency and the systems in which the records have been stored. Chain of custody does not require than an agency document every transaction involving that records (such as who viewed it when).

Suggestion: For 'confidential,' we would like to see language that includes contractual obligations added to this definition.

Response:
If an electronic public record is public, it is public by statute. A contract on its own cannot create confidentiality; it must be authorized by statute.

Comment: The term 'confidential' is defined in the proposed rule as a record. In fact it is a defined status, rating or condition of a record. The defined term should be changed to "confidential record" or the definition needs changing.

Response:
The Office of the Secretary of State has changed the definition to "confidential record."

Suggestion: The definition for the term 'Confidential' references state or local laws. We recommend the rule also include a reference to federal laws. Many state agencies maintain records or data subject to federal laws like HIPPA, which clearly fall within a confidential classification.

Response:
This suggestion appears to be based on an earlier draft of the WAC. The current wording of this definition appears to have addressed this suggestion.

Suggestion: Consider using the definition for 'confidential' which is in the glossary and can be found under 'Restricted Records'.

Response:
It is not clear to which "glossary" this suggestion refers. Neither term was found in the Society of American Archivists' Glossary of Archival Terminology.

Suggestion: 'Copy' – A copy is an exact duplicate, not "nearly identical" to the original. This definition only makes sense if you are talking about an electronic reproduction of completed form. For example, if you have a form filled out by a customer, take the information and enter it into a database, dispose of the data entry form and then re-create the data entry form from the database, would be a nearly identical copy. What you were considering this definition to mean needs to be better determined and re-defined.

Response:
"Copy" is not used in the body of the WAC. The definition has been deleted for lack of need.

Suggestion: The definition for 'copy' is very circular and vague; please clarify.

Response:
"Copy" is not used in the body of the WAC. The definition has been deleted for lack of need.

Question: What is the goal or purpose of defining 'copy'?

Response:
"Copy" is not used in the body of the WAC. The definition has been deleted for lack of need.

Question: What are the criteria for ensuring that a 'copy' is not a new record altogether?

Response:
A “copy” becomes a new record when the copy itself is evidence of a business transaction (eg if it is annotated or attached as part of a new record).

Suggestion: Correct spelling of 'Data base' to Database.

Response:
The Office of the Secretary of State has changed the wording from “data base” to “database.” Both the single-word and two-word versions are acceptable.

Suggestion: The phrases ‘data base’ and ‘data base management system’ are not used in the WAC except as part of another definition. They should be used or removed from the glossary.

Response:
“Database” only appears in the definition of “confidential record” and since it is not used in the proposed rules, it has been deleted. Would “database management system” is used in Section 090.

Suggestion: Add “if participating” before “local government” for the definition of ‘Digital archives.’

Response:
The digital archives is designed to permanently preserve electronic state and local government records with archival value even if some local governments choose not to transfer their archival electronic records and instead fund their permanent preservation from their own resources.
In Section 434-662-010 “and/or” language has been added to indicate using the Digital Archives to meet existing electronic public record requirements is optional. If an agency chooses not to use the Digital Archives for storage of archival electronic public records, the agency must still maintain those records to the standards established in Chapter 434-662 WAC.

Suggestion: We recommend changing the definition of a Digital Archives to reflect the technology and not the specific instance referenced in this case.

Response:
The specific definition for “Digital Archives” is appropriate because it defines the facility. A technology definition would be appropriate to define “digital archiving.”

Comment: The definition for ‘digital image’ ignores images originally created electronically (i.e. from a digital camera). What is defined is a “digitally reformatted image”. This is a further confounding of the issues of preserving original electronic records and of reformatting these for access.

Response:
References to “digital image” are no longer contained in 434-662 WAC. The definition has been deleted.

Comment: ‘Disposition’ – preservation on microfilm or digital image, is not a form of disposition. In records management terms, disposition is recycling, shredding or transfer to the archives. By placing the options of preservation of microfilm or digital image, you are allowing the paper to be disposed, but the information still exists in a different format, which is a liability to agencies.

Response:
The Office of the Secretary of State has changed the definition of “disposition” to: "Disposition" means the action taken with a record once its required retention period has expired. Disposition actions include but are not limited to transfer to the archives or destruction.

Suggestion: We would like the language for the definition of ‘disposition’ clarified to express that preservation on microfilm or digital film is an alternative only for archival records.

Response:
The Office of the Secretary of State has changed the definition of “disposition” to: "Disposition" means the action taken with a record once its required retention period has expired. Disposition actions include but are not limited to transfer to the archives or destruction. Preservation on microfilm or digital image is an efficiency tool used for non-archival records.

Suggestion: In the definition for ‘disposition’ consider using the word ‘manner or method’ instead of ‘action’.

Response:
The Office of the Secretary of State believes “action” is the most accurate term. It is not a “manner or method” taken, but action performed.

Comment: ‘Electronic record’ – You have combined two definitions into one, electronic records and storage formats, which is adequately covered in “media file format.” The last part is unnecessary.

Response:
We agree and deleted the last part of the definition. The definition has been changed to: "Electronic record" includes those public records which are stored on machine readable file format.

Suggestion: Definition for 'public record' needs the word 'and' to replace 'or' in the following: "… of any governmental or proprietary function prepared, received, used or owned by any state or local agency …"

Response:
Using "or" *was* intentionally more inclusive. The definition has been changed to: "public record" has the same meaning as in Chapters 40.14 and 42.56 RCW.

Suggestion: Change wording of 'public record' to: "means any record, original or copy, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, received, used or owned by any state or local agency regardless of physical form or characteristic. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives." This conforms to the RCW more accurately.

Response:
The definition of "public record" has been changed to: "public record" has the same meaning as in Chapters 40.14 and 42.56 RCW. Chapter 40.14 covers the definition of public record as it applies to the Legislature.

Suggestion: Add "if participating" before "local agency" in the definition for 'public record.'

Response:
The records of local government agencies are still public records, even if some local government agencies choose not to transfer their archival records to Washington State Archives.

Suggestion: In the definition for 'records committees,' delete the reference to the local records committee.

Response:
This WAC applies to records which are covered by records retention schedules approved by both the state and the local records committees.

Suggestion: For the definition of 'records committees' add the following text: "If a local government has elected to participate in the state digital archives, then "records committees" includes the local records committee created in RCW 40.14.070."

Response:

This WAC applies to records which are covered by records retention schedules approved by both the state and the local records committees, even if some local governments choose not to transfer their archival electronic records and instead fund their permanent preservation from their own resources.

Comment: We are very concerned with the use of the term "minimum" in the definition of 'records retention schedule'. We feel it is critical to have clear requirements regarding when a record must be kept and when it must be destroyed. "Minimum" blurs the clarity by suggesting that a record can, but need not, be destroyed at the end of its retention period.

Response:
The retention periods specified in records retention schedules are the minimum required retention period. There are circumstances where records must not be destroyed even if they have been retained for the required minimum retention period such as records required for anticipated or ongoing litigation or public disclosure requests.

Suggestion: 'Records retention schedule' – The word "minimum" needs to be replaced with "the required."

Response:
The retention periods specified in records retention schedules are the minimum required retention period. There are circumstances where records must not be destroyed even if they have been retained for the required minimum retention period such as records required for anticipated or ongoing litigation or public disclosure requests.

Suggestion: In the definition of 'records retention schedule' delete the words "state or local."

Response:
This WAC applies to records which are covered by records retention schedules approved by both the state and the local records committees.

Comment: In the definition of 'retention period' we are very concerned with the use of the term "minimum". We feel it is critical to have clear requirements regarding when a record much be kept and when it must be destroyed. "Minimum" blurs the clarity by suggesting that a record can, but need not, be destroyed at the end of its retention period.

Response:
The retention periods specified in records retention schedules are the minimum required retention period. There are circumstances where records must not be destroyed even if they have been retained for the required minimum retention period such as records required for anticipated or ongoing litigation or public disclosure requests.

Suggestion: 'Retention Period' – The definition needs to be changed: 'Retention period' means the required amount of time a records series must be retained to meet legal, fiscal,

administrative or historical value as listed on an approved records retention schedule or general records retention schedule.

Response:
We agree, and have also added the word "minimum" to proceed "required." The definition now reads: 'retention period' means the required minimum amount of time a records series must be retained to meet legal, fiscal, administrative or historical value as listed on an approved records retention schedule or general records retention schedule.

Suggestion: "Retention period" … add "or set by statute" to the end of the definition.

Response:
The state and local records committees consider legal requirements such as those specified by statute when approving the retention periods within records retention schedules. Therefore there is no need to include the proposed addition to the definition of retention period.

Suggestion: Add a definition for 'retrievable'.

Response:
We believe "retrievable" is a common term that does not necessitate a definition. Where a definition is not provided, a common dictionary definition should be assumed.

Suggestion: Add a definition for 'searchable'.

Response:
We believe "searchable" is a common term that does not necessitate a definition. Where a definition is not provided, a common dictionary definition should be assumed.

Suggestion: The definition for 'Spider, web spider, web crawler, robot, and bot' should be removed as these technologies will likely become obsolete and replaced by others in the near future.

Response:
The definition has been changed to:
"Spider~~, web spider, web crawler, robot, and bot~~" means a software program that automatically collects and retrieves on-line web content and all documents linked to such content. Examples include, but are not limited to: web spiders, web crawlers, robots, and bots.
This helps clarify "spider" as a concept and helps the definition stay applicable through technology changes.

Suggestion: "Spider, web spider, web crawler, robot, and bot" is a poor "term set." These are a list of synonyms for a term like "Search Engine" or "Web Indexing engine" which would be clearer.

Response:
The definition has been changed to:
"Spider~~, web spider, web crawler, robot, and bot~~" means a software program that automatically collects and retrieves on-line web content and all documents linked to such content. Examples include, but are not limited to: web spiders, web crawlers, robots, and bots.
Moving examples of similar software programs from the title to examples at the end is a more appropriate placement; it helps clarify "spider" as a search engine concept.

Section 030
Retention scheduling and disposition of electronic public records

Suggestion: Reword last sentence to indicate local governments have the option to retain their own records if they so choose, pursuant to RCW 27.48.010, RCW 36.22.170 and WAC 434-615-030.

Response:
The purpose statement has been changed to indicate an agency has the option to maintain their public records. If an agency chooses to maintain their own public records, they must do so to archival standards. If an agency can no longer maintain an archival public record, it must be transferred to Archives.

Suggestion: Change 'can' to 'may' in the last sentence.

Response:
Agencies can retain their own public records, but must do so to archival standards. If an agency can no longer maintain an archival public record, it must be transferred to Archives. The word, "can" is more accurate.

Suggestion: Delete the word 'as' between 'such' and 'time'.

Response:
This suggestion appears to be referring to an earlier draft of the proposed WAC as the words within the current wording of section 030 are "such time as".

Suggestion: Delete the words "state or local" (they appear twice).

Response:
This suggestion appears to be referring to an earlier draft of the proposed WAC as the words "state or local" only appear once within the current wording of section 030.

Suggestion: The phrase "retention schedules" in the second sentence needs to be changed to "retention periods."

Response:
While the second sentence uses "retention schedules" and the third sentence refers to "retention periods", this is consistent in the context in which they are used. In the second sentence, it is the records retention schedules (which includes the retention period) that are adopted/approved by the records committee. In the third sentence, it is more appropriate to refer to "…changes to the retention period of, any public record,…" rather than retention schedules of any public record.

Suggestion: Since e-mail is a communication device, and not a storage device, communications should be retained according to the record series that they fall under.

Response:
While this statement is true, this is already covered by the first two sentences of section 030:

> *Electronic records are bound by the same provisions as paper documents as set forth in chapter 40.14 RCW. Electronic records must be retained pursuant to the retention schedules adopted by the records committees.*

The addition of this sentence which specifically addresses e-mail which essentially repeats the first two sentences does not add anything further to the existing wording and may lead to confusion by talking both more generally about electronic records and then speaking specifically to e-mail.

Comment: The last sentence contradicts the definition of Archival Value, which state that the State Archivists appraisal defines archival, this section indicate it is the LRC or SRC that designates archival.

Response:
To clarify, it is the State Archivist that designates particular records series to be archival, that designation is added to the records retention schedules which are approved by the State Records Committee (SRC) and the Local Records Committee (LRC).
The wording has been changed to bring Section 030 to be consistent with the definition of "archival value." The last sentence now reads, "Public records that are designated "archival" by the ~~state or local records committee~~ state archivist must be maintained pursuant to the provisions of this chapter until such time as they ~~can be~~ are transferred to the state archives."

Comment: Our agency doesn't currently have the technology to separate potential archival records that are on computer hard drives, network drives, DVDs, CDs, disks, thumb drives, PDAs, Blackberry devices, etc. The exception would be records that are in our Liberty Imaging System already approved by the Secretary of State's Office.

Response:

State and local government agencies need to ensure that public records which are stored on "computer hard drives, network drives, DVDs, CDs, disks, thumb drives, PDAs, Blackberry devices, etc." are retained and remain accessible for their minimum retention periods, including those which are designated "archival" or "potentially archival". Agencies need to develop and implement policies and procedures on the use of such technology that address how the agency will manage public records stored on these devices as part of their records management program.

Comment: This section taken literally, and to its logical conclusion, requires inventory and retention scheduling of not only imaged records, database and GIS applications, but also word files, spreadsheets and other electronic records on each desktop "C or "H" drive. This would be expensive and labor intensive.

Response:
Conducting inventories and retention scheduling of public records are fundamental components of successful state and local government's records management programs. State agencies are already required under RCW 40.14.040 to conduct records inventories at least once during a biennium. These inventories need to include "word files, spreadsheets and other electronic records on each desktop" or shared network drive, provided they are public records within the meaning of RCW 40.14.010 Not all word files or spreadsheets are public records for the purposes of RCW 40.14.010. Records inventories are also invaluable in assisting state and local agencies in meeting their other legal obligations such as fulfilling public disclosure records requests.

Comment: This section doesn't make the fine distinctions that archivist have always made regarding non-electronic media and have been developing in regard to electronic media for the past 20 years:

- Format seems subordinate to content
- Electronically published/disseminated as opposed to electronic delivery
- Valid uses of migration and emulation

Response:
It is unclear how the wording of section 030 "doesn't make the fine distinctions that archivists have always made regarding non-electronic media and have been developing in regard to electronic media". Could you please provide further information on this matter.

Comment: This section doesn't respect the integrity of a file unit.

Response:
It is unclear how the wording of section 030 "doesn't respect the integrity of a file unit". Further information is needed.

Question: Would this section require that a government entity break up a historic record by sending the electronic copy of the report and the CD/DVD to the State Digital Archives while

it kept the printed report and the hard copy ephemera? This goes against every archival principle out there and would be a detriment to historical research.

Response:
This section does not "require that a government entity break up a historic record". The section requires that:

> *Public records that are designated "archival" by the state archivist must be maintained pursuant to the provisions of this chapter until such time as they are transferred to the state archives.*

Question: The last sentence states 'Public records that are designated 'archival' or 'potentially archival' by the state or local records committee must not be destroyed without approval of the WA state archives.' This sentence sounds as if the agencies can contact the Archives and ask them if they can destroy a record or records series which has been designated Archival without sending the records to the Archives. Should it be worded differently to avoid unattended implied consequences?

Response:
This question appears to be referring to an earlier draft of the proposed WAC. The current wording of the last sentence of Section 030:

> *Public records that are designated "archival" by the state archivist must be maintained pursuant to the provisions of this chapter until such time as they are transferred to the state archives.*

Section 040
Agency duties and responsibilities

Question: In principle retention of electronic-only is most desirable and appropriate; however in some cases retention of paper copy may be the only means of attaining file completeness. What is the legal basis for this requirement?

Response:
This section only applies to records which are "born-digital". It does not include documents which are created electronically, but only become a record of the agency when they have been printed and signed (such as letters, policies, etc created in Microsoft Word but become a record when they are signed). It does apply to documents which become records of the agency when they are in an electronic format such as e-mails, records contained within databases, etc. The printing of these records does not adequately retain the metadata which forms part of the record and can be used verify the record's authenticity. For these records, agencies will need the approval of the relevant records committee to be able to dispose of the electronic record if they wish to only retain the record in a hardcopy format.

Suggestion: Please correct the last line of this section starting with the word "unless.... Otherwise, if left as drafted, this is in direct conflict with the new Federal Rule that became effective in December, 2006.

Response:
This provision allows a mechanism where the record committees may allow the electronic version to be disposed of earlier. The retention requirements for the records (such as the Federal Rules of Civil Procedures) would be considered by the records committees as part of their decision making process.

Suggestion: Use “required retention period” instead of “designated retention schedule.”

Response:
The term has been changed to, “designated retention period.” The *designated* retention period covers the *required* amount of time a record must be retained. Using the term period is more accurate, because it is a *period* of time that is being referred to, and it is documented on the *schedule*.

Suggestion: Delete the words “state or local” before “records committee.”

Response:
The wording has been changed to: “Printing and retaining a hard copy is not a substitute for the electronic version unless approved by the ~~state or local~~ applicable records committee.” The previous language implied approval could be granted to an agency by either the state or local records committee. Referring to the applicable records committee is less ambiguous.

Question: In the first sentence, does the word “searchable” mean the full-text must be searchable?

Response:
The meaning of “searchable” depends on the records series. Electronic records must maintain an equal level of searchability as when they were originally created.

Suggestion: The second sentence dealing with printing and retaining of hard copies needs to be better thought out. The way it currently reads, it appears that every time we want to retain a document in hard copy vs. electronic, and we need permission from the State. A concern is with individuals who take the RCWs and WACs very seriously for public disclosure purposes and would find this clause and ask for all approvals for anything we would print.

Response:
This section only applies to records which are “born-digital”. It does not include documents which are created electronically, but only become a record of the agency when they have been printed and signed (such as letters, policies, etc created in Microsoft Word but become a record when they are signed). It does apply to documents which become records of the agency

when they are in an electronic format such as e-mails, records contained within databases, etc. The printing of these records does not adequately retain the metadata which forms part of the record and can be used verify the record's authenticity. For these records, agencies will need the approval of the relevant records committee to be able to dispose of the electronic record if they wish to only retain the record in a hardcopy format.

Suggestion: Adding definitions for 'searchable' and 'retrievable' would help stakeholders understand what is meant or expected of this section.

Response:
We believe "searchable" and "retrievable" are common terms that do not necessitate definitions. Where a definition is not provided, a common dictionary definition should be assumed.
An agency does not need to build in additional "searchability" to a record; the original level of searchability must be maintained. Similarly, with organization, an agency should organize records so that they can be reasonably retrieved. No special actions need to be taken, only maintenance or original levels of organization that allows retrieval.

Suggestion: Add 'applicable' before "state or local records committee."

Response:
We agree and have changed the sentence to: "Printing and retaining a hard copy is not a substitute for the electronic version unless approved by the ~~state or local~~ applicable records committee." The previous language implied approval could be granted to an agency by either the state or local records committee. Referring to the applicable records committee is less ambiguous.

Suggestion: The last sentence is rather confusing. For those of us who work in records management as a full time position, it is understandable, but for those that are only part time or where records management is only a small percentage of their position, this sentence can be confusing. I would recommend leaving out several of the IT terms and stating in plain language what the intent of this section is.

Response:
This suggestion appears to be based on an earlier draft of the WAC as there are no IT terms in the last sentence in the current wording of this section.

Comment: Agencies store electronic records in a number of different ways, and often on systems that are 'hosted' and controlled by other parties. Portable media, also defined in the definition of electronic records, is not centrally searchable.

Response:
An agency must maintain the same level of searchability a record possessed when originally used. There is no need to build in searchability.

Question: Who needs to be able to search through records? Individual employees?

Response:
The custodial agency – they would be responsible for compliance with any public records request.

Comment: This section appears to contradict WAC 434-663.

Response:
WAC 434-663 establishes the process for approving the early disposal of paper-based records that have been digitized. This section applies to records that have been "born digital" and requires agencies to seek the approval of the relevant records committee for the early disposal of "born digital" records where a hardcopy is being retained in lieu of the electronic version.

Question: What authority is there for the statement that "Printing and retaining a hard copy is not a substitute for the electronic version…"?

Response:
This section only applies to records which are "born-digital". It does not include documents which are created electronically, but only become a record of the agency when they have been printed and signed (such as letters, policies, etc created in Microsoft Word but become a record when they are signed). It does apply to documents which become records of the agency when they are in an electronic format such as e-mails, records contained within databases, etc. The printing of these records does not adequately retain the metadata which forms part of the record and can be used verify the record's authenticity. For these records, agencies will need the approval of the relevant records committee to be able to dispose of the electronic record if they wish to only retain the record in a hardcopy format.

Suggestion: Add clarifying language to indicate the determination that retaining a hard copy is not a substitute for the electronic version is a State Archives requirement. Explain why.

Response:
This section only applies to records which are "born-digital". It does not include documents which are created electronically, but only become a record of the agency when they have been printed and signed (such as letters, policies, etc created in Microsoft Word but become a record when they are signed). It does apply to documents which become records of the agency when they are in an electronic format such as e-mails, records contained within databases, etc. The printing of these records does not adequately retain the metadata which forms part of the record and can be used verify the record's authenticity. For these records, agencies will need the approval of the relevant records committee to be able to dispose of the electronic record if they wish to only retain the record in a hardcopy format.

Question: What criteria would the records committee use to approve or disapprove retaining a hard copy instead of the original electronic record? How would conflicts of opinion be handled?

Response:
The records committees would assess each request on its merits as they do with all disposition requests. Under RCW 40.14, the decisions of the state records committee are made by a majority vote and the decision of the local records committee are by unanimous vote.

Comment: Our Archivist favors hard copy for preservation purposes, and is concerned at the blanket assertion that printing is not a valid substitute. In many cases, such as the Microsoft Word form of a policy memo, the printed version is intended to be the official record and the electronic version is only a working file. The simple fact that a record has an electronic form would not be sufficient justification for keeping the record in that format.

Response:
This section only applies to records which are "born-digital". It does not include documents which are created electronically, but only become a record of the agency when they have been printed and signed (such as letters, policies, etc created in Microsoft Word but become a record when they are signed). It does apply to documents which become records of the agency when they are in an electronic format such as e-mails, records contained within databases, etc. The printing of these records does not adequately retain the metadata which forms part of the record and can be used verify the record's authenticity. For these records, agencies will need the approval of the relevant records committee to be able to dispose of the electronic record if they wish to only retain the record in a hardcopy format.

Question: How would paper records that have been imaged be handled?

Response:
This section applies to records that have been "born digital". WAC 434-663 applies to paper records that have been imaged.

Question: Does this preclude conversion of electronic records/images to microfilm at any point in the life of the record? This practice is allowed and even mandated by RCW 40.10 for the purpose of essential records protection.

Response:
This section does not preclude to conversion of electronic records/images to microfilm, especially for the purposes of essential records protection. However, the early disposal of "born digital" records that had been converted to microfilm would still require the approval of the relevant records committee.

Question: If duplication by microform is acceptable in some cases, why would paper copies not also be acceptable?

Response:
In the conversion of hardcopy records to microform, the entire record is preserved. In the conversion of "born digital" records (such as e-mails, records contained within databases, etc) to paper, not preserved all of the components of the records (such as metadata which can be used verify the record's authenticity, formulas within spreadsheets, etc) are preserved. This is why this is a different process and simply retaining only the printed version is not retaining the entire record because part of the record is being destroyed.

Comment: This requirement goes beyond the stated purpose of the chapter and appears to apply to both archival and nonarchival records. A user would not expect to find such a requirement by reading the chapter title.

Response:
This section does apply to both records designated as archival and records which are not.

Suggestion: This section should reference the WAC regarding certification of imaging systems.

Response:
WAC 434-663 establishes the process for approving the early disposal of paper-based records that have been digitized through the certification of imaging systems. This section applies to records that have been "born digital" and requires agencies to seek the approval of the relevant records committee for the early disposal of "born digital" records where a hardcopy is being retained in lieu of the electronic version.

Comment: This section seems to rescind the authority of the agency to determine the media upon which information is retained. We believe the media format of a record should be a business decision of the agency or local government.

Response:
Agencies can make business decisions about the formats that they create records in, however, once records have been created or received in a particular format, the agency still needs authority to dispose of the original records where they wish to retain the record in another format. This WAC (sections 050 and 055) covers the migration of electronic records from one electronic format to another. In the conversion of "born digital" records (such as e-mails, records contained within databases, etc) to paper, not preserved all of the components of the records (such as metadata which can be used verify the record's authenticity, formulas within spreadsheets, etc) are preserved. Simply retaining only the printed version is not retaining the entire record because part of the record is being destroyed.

Comment: Criteria for establishing authenticity have not been sufficiently defined to enable compliance.

Response:
If records used in the conduct of business are stored in a secure environment where the agency has documented system security policies, they meet the general requirement for authenticity. Documenting the configuration and security requirements for accessing the system and its records is usually sufficient to prove the authenticity of the records.

Comment: This section may also result in an unfunded mandate which many agencies will find too expensive to comply with (if this is interpreted to mean that an ERMS must be purchased to retain the record in electronic format).

Response:
While an electronic records management system (ERMS) would greatly assist an agency with their management of electronic records to comply with this WAC, RCW 40.14 and other legislative requirements including public disclosure, it is not necessary to purchase a system to comply with this WAC.

Comment: This section appears quite broad and potentially unattainable across mid- to large-size agencies.

Response:
This section only applies to records which are "born-digital" records. It does not include documents which are created electronically, but only become a record of the agency when they have been printed and signed (such as letters, policies, etc created in Microsoft Word but become a record when they are signed). It does apply to documents which become records of the agency when they are in an electronic format such as e-mails, records contained within databases, etc. The printing of these records does not adequately retain the metadata which forms part of the record and can be used verify the record's authenticity. For these records, agencies will need the approval of the relevant records committee to be able to dispose of the electronic record if they wish to only retain the record in a hardcopy format.

Comment: Implementation of this far-reaching requirement will be difficult and possibly expensive for decentralized agencies such as ours. Retention of those digital files which might reasonably be required in anticipation of litigation and in conformance with the FRCP should be risk management decisions by agencies.

Response:
The retention periods for records incorporate time periods in anticipation of litigation. The entire record needs to be preserved for that minimum retention period. In the conversion of "born digital" records (such as e-mails, records contained within databases, etc) to paper, not preserved all of the components of the records (such as metadata which can be used verify the record's authenticity, formulas within spreadsheets, etc) are preserved. Simply retaining only the printed version is not retaining the entire record because part of the record is being destroyed.

Comment: suggests that printing email is inadequate retention, and the FAQ on page 7 says that recent federal case law holds that printing is not the same a keeping the electronic version. The only case cited is Zubulake V, however, and it did not hold that metadata must be maintained, but only mentioned in passing that in response to a litigation hold notice, some employees kept electronic versions and some printed them out. The general rule in the federal litigation hold context appears to be contrary to the FAQ statement; under the Sedona Principles 9 and 12, metadata need not be kept absent special need. Williams v. Sprint/United Mgmt. Co., 230 F.R.D. 640, 650 (D. Kan. 2005). In any event, it would seem that the standard applicable for litigation holds is not the one which the Secretary of State should be adopting for retention of routine email. Indeed, the retention schedules of the State Local Records Committee as updated 11/05 state, "E-mail messages with public record content should be retained in E-mail format only as long as they are being worked on or distributed."

Response:
As the metadata for email already forms part of the record, it is only lost when the email is printed and the electronic version is deleted. Keeping that metadata (by retaining the email in its native format) is only required for a shorter period for routine email as the retention period applicable to those records is already shorter than those for other records. The *Local Government General Records Retention Schedule* is currently being revised and the advice published within it concerning email will also be revised.

Section 050
Disposition of electronic public records identified by the records committees as archival

Question: "Agencies have a duty to work with the state archivist…" does this include non-essential agencies, commissions and boards?

Response:
All agencies both state and local have a duty to work with the state archivist. State agencies should work with their State Records Committee and local agencies should work with their Local Records Committee.

Question: Does this section pertain to all electronic records or just imaging systems?

Response:
This section pertains to all electronic records, not just imaging systems.

Question: The first part states that 'Electronic records…must be retained in their original format…unless all the converted records have been verified for completeness and accuracy of the migration to a new system…' The next sentence than states 'Data in the original format

shall not be disposed of regardless of migration…' The question is can we or can we not dispose of the original format?

Response:
The original format should not be disposed of for a period of one year after migration. This will ensure that the majority if not all migration issues will be resolved. Keeping the original format any longer than one year could place unnecessary licensing costs on the agencies.

Question: Who needs to be able to search and retrieve records?

Response:
At a minimum the agency contributing the data needs to be able to search and retrieve the data it contributes to the Digital Archives (DA). Any data except exempt data shall be made available to the public for search on the DA Website.

Question: What mechanisms will be used to search and retrieve?

Response:
Typically, the DA website is used for search and retrieval of electronic records. However, e-mail will be searchable only through a custom application designed and created by the DA. Their will be no public access to e-mail through this custom tool. In order to retrieve e-mail contributors will have to log-in to gain access to their records.

Comment: There is a cost impact to retain and maintain duplicate systems. This is redundant and overly burdensome.

Response:
Duplicate systems should only be maintained for the testing of the data migration. Once an agency is 100% confident that there is no data loss, there is no point of maintaining the duplicate system.

Question: How will we be able to read electronic records over time as different versions of software changes?

Response:
The ability to view electronic records over time is the burden of the DA for any electronic records that they retain. There is not a simple answer question. This takes a joint effort with the DA staff and various technology partners such as Microsoft to continually be studying and implementing new technologies.

Comment: This section assumes that the software and hardware will be retained. That is not always the case. In the instance of a firm called Computech, a software firm used by many offices in 12 counties, it is going out of business in 2010, and depending on the migration in those counties, there will be no support for the original format.

Response:
Duplicate systems should only be maintained for the testing of the data migration. Once an agency is 100% confident that there is no data loss, there is no point of maintaining the duplicate system.

Suggestion: Records may not be in active use, but may still have time left on their retention period, the last sentence should be changed to read that the records will be transferred once their approved required retention period has passed unless the state would like records that may still be needed in the agency.

Response:
The last sentence has been changed to read:
Agencies have a duty to work with the state archivist ~~for~~ to centralize, preserve and/or transfer ~~of~~ archival ~~data~~ records to the digital archives ~~once records are not in active use and/or a data migration is planned~~.
Without the editing marks:
Agencies have a duty to work with the state archivist to centralize, preserve and/or transfer archival records to the digital archives.

Comment: the words "all" and "some" seem to be in conflict.

Response:
We agree and have deleted the word "all."

Suggestion: Delete the sentence that begins "Original data, hardware, and software …".

Response:
We've edited the sentence to read:
Original data, hardware, and software must be maintained ~~for a period not less than one year after~~ until successful migration to a new system has been verified.

Suggestion: Add 'State' to beginning of sentence "Agencies have a duty to work with the State Archivist …"

Response:
The State Records Committee *and* the Local Records Committee clearly intend for their client agencies to work with the State Archivist to centralize, preserve, and/or transfer records to the State Archives.

Suggestion: Keeping all born digital records electronically for long term records that are not archival is extremely difficult. We are asking a change to either:

- Digital Archives revises their policy and take long term records that are non-archival (this would need to be discussed as to what retention to start with...20 years, 25 years, etc.
- Change the rules so that the records can be retained permanently on film.

Response:
The first suggestions is addressed in RCW 40.10.010: In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the state shall designate those public documents which are essential records of his office and needed in an emergency and for the reestablishment of normal operations after any such emergency. A list of such records shall be forwarded to the state archivist on forms prescribed by the state archivist. This list shall be reviewed at least annually by the elected or appointed officer to insure its completeness. Any changes or revisions following this review shall be forwarded to the state archivist. Each such elected and appointed officer of state government shall insure that the security of essential records of his office is by the most economical means commensurate with adequate protection. Protection of essential records may be by vaulting, planned or natural dispersal of copies, or any other method approved by the state archivist. Reproductions of essential records may be by photo copy, magnetic tape, microfilm or other method approved by the state archivist. Local government offices may coordinate the protection of their essential records with the state archivist as necessary to provide continuity of local government under emergency conditions.
The Digital Archives will accept non-essential records.
We've edited the sentence to read:
Original data, hardware, and software must be maintained ~~for a period not less than one year after~~ until successful migration to a new system has been verified.
This language change prevents the need to keep non-archival records long term – instead they must be kept until successful migration has been verified.
Retention on microfilm would lose the functionality of the records.

Comment: The effort to reconstitute data will be substantial as we do not currently have these processes built into the systems. Requirements to implement the reconstitution of records will lead to designs and development of databases that are contrary to mainstream technology changes to enhance data management and contribute to reuse of coding components. This will take us backward in time to the days of flat file processing with the efficiencies in performance and data storage being sacrificed for cost reduction to meet archival requirements.

Response:
Section 050 does not mandate reconstitution of data.
If it was the following sentence that caused the hardship, the wording has been changed to read: Original data, hardware, and software must be maintained ~~for a period not less than one year after~~ until successful migration to a new system has been verified.

Suggestion: Audit functions will need to be developed to insure data migrated from old systems to new system migrates without errors. WAC does not specify how to verify or what the criteria is that constitutes that the data has been verified for completeness and accuracy.

Response:
When data is migrating from one system to another, the agency should be testing the migration code to determine if it is successful. This is part of the Software Development Life Cycle for any information technology. It is up to the agency to create their own test plans and test cases.

Comment: We currently create short term back-ups of our electronic records for business recovery purposes only. To meet these new requirements will require a complete re-evaluation of what files are backed up and how those back-ups are performed. For example, today's back-ups are done for each file server and each file server may hold many different electronic files with different retention requirements. It will take us considerable time to restructure the back-ups to properly reflect retention requirements. I also anticipate that it will require additional equipment and operating software to implement these new and more sophisticated back-ups. In addition to actually performing the back-ups these new WACS will require that we retain at least some of these files for relatively long periods of time. Since all storage media deteriorates over time, we will also need to develop a program that duplicates files prior to their reaching unrecoverable deterioration. Since we perform only short term business recovery back-ups currently, these new WACs will require entirely new skills and programs to maintain long term back-up media.

Response:
The intention was not to burden agencies by requiring long-term back-up media.
The wording has been changed to read: Original data, hardware, and software must be maintained ~~for a period not less than one year after~~ until successful migration to a new system has been verified.

Comment: We are very concerned about the requirements to retain the hardware on which files are created. For example, we recently converted from one ballot counting system to another. The old ballot counters were "traded in" as part of that project. Since each election produces a "point in time" file, such files are not converted to the new system. In this or similar situations the WAC appears to require a county to retain the old equipment (even if such equipment is no longer supported by the manufacturer). We also recently changed the system used to make an audio record of Board of County Commissioner meetings. Again, these are "point in time" files; will we be required to convert all of our history to the new system to avoid potential failures of the hardware from our old system. These requirements place counties in a very difficult position.

Response:
The hardware on which files are created should be retained until the agency is 100% confident that the data migration effort from one system to another is 100% successful. The means

sufficient testing should be performed by the agency to ensure that the agency is 100% confident that no data loss occurred.

Section 055
Disposition of electronic public records identified by the records committees as nonarchival

Suggestion: Add wording to clarify that it is necessary to keep original format along with hardware and software for all records until: 1) data has passed retention; 2) the data has been verified as complete and accurate as migrated to the new system.

Response:
Sections 055 allows for the migration of electronic nonarchival records to new media formats and the subsequent disposition of obsolete electronic media, provided that the migrated records have been "verified accurate" and are retained for the minimum retention period as the primary record. It is not necessary to require agencies to retain the obsolete media (hardware and software) provided the primary record (in the new format) is retained for the minimum retention period and it has been "verified accurate" (which includes complete).

Suggestion: The digital imaging WAC requires that verification of successful migration be done on images before the paper can be destroyed. An agency must have a quality control process to ensure complete and accurate image capture as a requirement for certification. It seems that the same standard should apply here for all records within retention regardless of whether they are archival or not.

Response:
Section 055 requires that the migration of electronic nonarchival records be "verified accurate". For a migration process to be "verified accurate", there must be a quality control process in place to ensure that the migrated records are complete and accurate.
It is entirely appropriate to have one standard for the disposition of electronic nonarchival records and a higher standard for those which are designated as archival. This is because electronic records designated as archival have enduring value and are retained indefinitely. Therefore they require a higher standard to ensure their authenticity is preserved than records will be destroyed at some time in the future.

Suggestion: When it states 'Electronic media' I am assuming this means an electronic record because it goes on to say 'not designated as archival or potentially archival'. Why not use the term 'Electronic record' instead of the word 'media'?

Response:
The word, "media" has been replaced with "records." The language actually refers to records, using "records" is a more accurate term.

Question: What does the term 'redundant' mean? It should be defined. We don't use the term 'redundant' in the Records Management environment. We would use the term 'secondary copy'.

Response:
This suggestion appears to be based on an earlier draft of the WAC. The current wording of Section 055 appears to have addressed this question.

Section 060
Authentication and chain of custody of electronic records

Question: What purpose does this section serve?

Response:
Chain of custody is the ability to demonstrate that a record has been in the control and custody of an agency, protected from alteration or deletion by unauthorized third parties. In order to maintain chain of custody, it is important that records are stored, moved or transferred in a secure, controlled method in order to ensure that the records were not intercepted or modified by an unauthorized third party. Chain of custody can be demonstrated by documenting the security policies of the agency and the systems in which the records have been stored. Chain of custody does not require than an agency document every transaction involving that records (such as who viewed it when).
If records used in the conduct of business are stored in a secure environment where the agency has documented system security policies, they meet the general requirements for authenticity. Documenting the configuration and security requirements for accessing the system and its records is usually sufficient to prove the authenticity of the records.

Comment: The requirements of this section seem to open agencies up to unintended liability.

Response:
Chain of custody is the ability to demonstrate that a record has been in the control and custody of an agency, protected from alteration or deletion by unauthorized third parties. In order to maintain chain of custody, it is important that records are stored, moved or transferred in a secure, controlled method in order to ensure that the records were not intercepted or modified by an unauthorized third party. Chain of custody can be demonstrated by documenting the security policies of the agency and the systems in which the records have been stored. Chain of custody does not require than an agency document every transaction involving that records (such as who viewed it when).
If records used in the conduct of business are stored in a secure environment where the agency has documented system security policies, they meet the general requirements for

authenticity. Documenting the configuration and security requirements for accessing the system and its records is usually sufficient to prove the authenticity of the records.

Comment: Compliance with this section may be burdensome and expensive.

Response:
Documenting the configuration and security requirements for accessing the system and its records is usually sufficient to prove the authenticity of the records. Chain of custody can be demonstrated by documenting the security policies of the agency and the systems in which the records have been stored. Chain of custody does not require than an agency document every transaction involving that records (such as who viewed it when).

Question: If chain of custody information is not contained in the metadata, how are agencies expected to obtain this information and verify its accuracy?

Response:
Chain of custody can be demonstrated by documenting the security policies of the agency and the systems in which the records have been stored. Chain of custody does not require than an agency document every transaction involving that records (such as who viewed it when).

Question: Would this section be applied point forward or would agencies be required to go back and try to apply the information?

Response:
This section will apply from when the WAC is approved.

Question: To what electronic records does this section apply? Only archival?

Response:
While this WAC covers the use of the Digital Archives, maintaining the chain of custody and authentication of all electronic records is important.

Comment: We need greater clarity on what to include in the chain of custody, what format it needs to be in, and at what point in the document's genesis the tracking needs to begin.

Response:
Chain of custody is the ability to demonstrate that a record has been in the control and custody of an agency, protected from alteration or deletion by unauthorized third parties. In order to maintain chain of custody, it is important that records are stored, moved or transferred in a secure, controlled method in order to ensure that the records were not intercepted or modified by an unauthorized third party. Chain of custody can be demonstrated by documenting the security policies of the agency and the systems in which the records have been stored. Chain of custody does not require than an agency document every transaction involving that records (such as who viewed it when).

Question: How is “authentication” and “chain of custody” documented for the record?

Response:
If records used in the conduct of business are stored in a secure environment where the agency has documented system security policies, they meet the general requirements for authenticity. Documenting the configuration and security requirements for accessing the system and its records is usually sufficient to prove the authenticity of the records.
Chain of custody can be demonstrated by documenting the security policies of the agency and the systems in which the records have been stored. Chain of custody does not require than an agency document every transaction involving that records (such as who viewed it when).

Question: Is logging of updates and inserts adequate?

Response:
Chain of custody can be demonstrated by documenting the security policies of the agency and the systems in which the records have been stored. Chain of custody does not require than an agency document every transaction involving that records (such as who viewed it when).

Question: Can only "soft deletes" be performed?

Response:
Hard deletes may be performed.

Comment: If only soft deletes are the intent then data storage requirements will escalate.

Response:
Hard deletes are the intended “deletion” in section 060. Archival records may only be “hard deleted” after verification of successful migration to the Digital Archives. Non-archival records may only be deleted at the conclusion of their minimum required retention period.

Question: Does each table contained in the database have to have an additional set of attributes added to indicate when a record was archived, in addition to when it was inserted or modified?

Response:
The transmitting agency does not need to add attributes or any additional fields. Attributes are submitted when a record is transmitted to the Digital Archives and the Digital Archives will maintain that information.

Question: Will further instruction be provided on how to implement this section?

Response:

Chain of custody is the ability to demonstrate that a record has been in the control and custody of an agency, protected from alteration or deletion by unauthorized third parties. In order to maintain chain of custody, it is important that records are stored, moved or transferred in a secure, controlled method in order to ensure that the records were not intercepted or modified by an unauthorized third party. Chain of custody can be demonstrated by documenting the security policies of the agency and the systems in which the records have been stored. Chain of custody does not require than an agency document every transaction involving that record (such as who viewed it when).
If records used in the conduct of business are stored in a secure environment where the agency has documented system security policies, they meet the general requirements for authenticity. Documenting the configuration and security requirements for accessing the system and its records is usually sufficient to prove the authenticity of the records.
If you need additional instruction, call the Digital Archives ((509) 235-7500).

Comment: Acquisition of software to perform these tasks will require research, budgeting, and implementation.

Response:
Chain of custody can be demonstrated by documenting the security policies of the agency and the systems in which the records have been stored. Chain of custody does not require than an agency document every transaction involving that records (such as who viewed it when).

Comment: With the employee turnover in some agencies, it may not be as feasible as it seems to document the chain of custody.

Response:
Chain of custody is the ability to demonstrate that a record has been in the control and custody of an agency, protected from alteration or deletion by unauthorized third parties. In order to maintain chain of custody, it is important that records are stored, moved or transferred in a secure, controlled method in order to ensure that the records were not intercepted or modified by an unauthorized third party. Chain of custody can be demonstrated by documenting the security policies of the agency and the systems in which the records have been stored. Chain of custody does not require than an agency document every transaction involving that records (such as who viewed it when).
If records used in the conduct of business are stored in a secure environment where the agency has documented system security policies, they meet the general requirements for authenticity. Documenting the configuration and security requirements for accessing the system and its records is usually sufficient to prove the authenticity of the records.

Section 070
Use of encryption on electronic records

Suggestion: The phrase "retention schedule" should be replaced with "approved required retention period."

Response:
The section now reads: If encryption is employed on public records, the agency must maintain the means to decrypt the record for the life of the record as designated by the approved required minimum retention period for that record.

Comment: Even though we've encrypted information containing confidential information and retained the key, the proposed WAC requires us to send the data unencrypted. This makes no logical sense.

Response:
The sentence referenced has been deleted from the proposed rules. An agency may send an encrypted document.

Question: Shouldn't decryption occur at the Digital Archives after transfer is completed? Otherwise, the transfer would not be secure.

Response:
Yes. The sentence referenced has been deleted from the proposed rules. An agency may send an encrypted document.

Comment: There isn't much stated in this section for such a large and potentially complex service and management issue set.

Response:
The section now reads: If encryption is employed on public records, the agency must maintain the means to decrypt the record for the life of the record as designated by the approved required minimum retention period for that record.
Archives staff members are available to answer questions or provide assistance to agencies.

Question: Will encryption used by state agencies be mandated as those specified in ISB documentation?

Response:
The proposed rules do not mandate encryption. If an agency uses encryption, the provisions of the transmittal agreement in Section 090, require the agency to also provide the means to decrypt encrypted documents.

Question: Who will be obligated to pay for the encryption service tools and key management administrative expenses?

Response:

If an agency chooses to encrypt a public record, the agency will incur the costs. The proposed rules do not mandate encryption.

Comment: This requirement is impractical. It is dependent on the software program that generates the encryption, and is not a realistic requirement. Encryption is an access control, not a record or an attribute of a record.

Response:
The section now reads: If encryption is employed on public records, the agency must maintain the means to decrypt the record for the life of the record as designated by the approved required minimum retention period for that record.

Suggestion: We recommend that Digital Archives not accept data that is encrypted. Instead, they can be accountable for the security of the data once it has been securely transferred to their custody. It is the responsibility of the agency submitting data to ensure that adequate data security is included in the "transmittal agreement" and performed correctly.

Response:
In the interest of preserving public records, some of which are encrypted, the Digital Archives will accept encrypted public records. Section 090 of the proposed rules contains a requirement for a submitting agency to identify any access restriction and the statutory authority for such restriction.

Comment: Encryption algorithms used by various products are mixed between common standard and unique proprietary. As a result, simply saving the encryption key may be insufficient to allow for proper decryption.

Response:
We agree. An encryption key is no longer referenced in the new language. Instead, the "means to decrypt" is required.

Suggestion: It is imperative that information about the originating software (including name, manufacturer and version number) also be stored with the encryption key. If this information is not available, then I would propose that the record be decrypted by the original algorithm and then re-encrypted using a designated "acceptable industry standard" algorithm.

Response:
The section now reads: If encryption is employed on public records, the agency must maintain the means to decrypt the record for the life of the record as designated by the approved required minimum retention period for that record.
Using "the means to decrypt" is intended to more broadly cover the information necessary for decryption.

Comment: Inadvertent disclosure of personally identifiable data contained with Agency data sets through the use of multiple data sets generated by multiple systems. Data from several agency and non-agency systems could be combined to enable third parties to assemble personally identifiable information. There is no mention in the proposed WAC as to how this is to be addressed. To remove this possibility involves a huge effort that will require a centralized data dictionary of all the data housed in State systems. This would have to be maintained at either DIS or OSOS, either of which will have to hold the responsibility for conducting a review of all agency data to determine the ability to conduct this assembly operation, develop procedures for notification in case of an inadvertent disclosure and provide overall management of the process. This will require a dedicated staff of data administrators in each agency to keep it current. We will need to increase its data administration staff by a minimum of 6 FTE to support this.

Response:
The transmittal agreement, which must precede transfer of records, requires the identification of any access restrictions. It is the responsibility of the agency to identify restriction for the record. Digital Archives will limit or restrict access to the record until a change is requested by the agency. Digital Archives adheres to all State and Federal statutory exemptions and restrictions.

Comment: Sections 070 and 100 are in conflict relating to security of the transfer. Section 070 talks about securing data, but not having it secure at the Digital Archives and Section 100 talks about using Secure File Transfer Protocol as one of the means of transfer.

Response:
Section 070 has been changed to allow an agency to send an encrypted record. The transmittal agreement also requires an agency to note access restrictions. These two requirements should address security concerns at the Digital Archives.

Section 080
Transfer of electronic records to the digital archives

Comment: This section is unclear.

Response:
Section 080 has been deleted. The requirements in the first two sentences have been added to section 040, under agency duties and responsibilities. The language in section 40 reads: An agency is responsible for a security backup of active records. A security backup must be compatible with the current system configuration in use by the agency.
The last sentence of section 080, requiring maintenance of records in their original format, has been completely deleted – it was in conflict with other sections of the proposed rules.

Suggestion: Add language: Therefore, the agency is responsible for an appropriate security back-up of active business records maintained in their own systems, which may be stored at the Digital Archives for disaster recovery purposes.

Response:
The requirements in the first two sentences have been added to section 040, under agency duties and responsibilities. The language in section 40 reads: An agency is responsible for a security backup of active records. A security backup must be compatible with the current system configuration in use by the agency.

Comment: Since microfilm is not digital, this statement could cause some confusion.

Response:
The sentence referencing microfilm has been deleted from the proposed rules.

Comment: Transfer needs to be complete and result in the State taking custody of the record, and providing all services to the public.

Response:
We agree with your statement for records not in *active* use by an agency. Once records have been submitted to the Digital Archives, the Digital Archives will take custody of the record and comply with requests for that record.
An agency should keep a security backup that is compatible with the agency's current system configuration for any record the agency believes it may still use.

Question: There is no mention of the method of transfer. Will there be a standardized method and format, or will whatever format the agency has created the data in be accepted?

Response:
Data is transferred to the Digital Archives (DA) one of two methods, hard drive or SFTP. The method of transfer is dependent on the amount of data to be transferred. The DA works one-on-one with the agency to determine the best method to transfer the data.
The format of the data being transferred is dependent on the type of data to be transferred. Again the DA works one-on-one with the agency when determining the format of the data.

Question: Does the digital archive also want the application that reads the data to insure retaining the original format?

Response:
When agencies transfer their websites, we request a copy of both the client or user interface (U/I) code and a copy of the database. If the data being transferred is not a web site, we do not usually request a copy of the application that reads the data. The DA uses its own custom code to extract and ingest the data into its system. Depending on the exemption status of the data, it may or may not be displayed on the DA website. The DA Website uses custom code

to display agency data, therefore, it is not dependent on the native application that the data was generated in when displaying data.

Question: The proposed WAC seems to imply that once transferred to the digital archive, the agency is relieved of all obligations to retain the data. True /false?

Response:
If the agency is still using the system or application that the data being transferred is derived from, then the agency is not relieved of its responsibility to retain the data. The agency must retain full backups of their data to support their ability to recover in the event of a disaster. Agencies should consult the State and Local Retention Schedules regarding their specific requirements regarding records retention.

Comment: We don't know the requirements of your system to know how to make the electronic information connect with your Digital Archives.

Response:
Agencies should contact the DA directly to understand the requirements for transferring their data to the DA. Data is transferred either by hard drive or SFTP. The DA works one-on-one with each agency to ensure the successful transmission of their data.

Comment: Maintenance of original format is a large topic because it could refer to medium of data recording, the record and data format, the particular version of software application used to process records, something else, or a combination of all these factors. We need more guidance.

Response:
The sentence requiring an agency to maintain records in original format has been deleted from the proposed rules. Once an agency has transferred a public record to the Digital Archives, the Digital Archives will take responsibility for maintenance of the record in its original format.

Comment: It seems to me that backward compatibility would be a form of recovery and a valuable source / resource for county agencies in the event of a disaster and subsequently would cause agencies to utilize the DA more readily. While I realize that agencies are required to ensure they have appropriate security backup; many of the counties on the Westside use repositories also on the Westside. Should we be hit with a true disaster, potentially our 'backup' will be affected as well.

Response:
The DA provides a service called the Disaster Recovery Tape Storage System(DRTSS). This service allows agencies to ship a copy of their back up tapes to the DA. In order to learn more about this service, please contact the DA directly.

Suggestion: In addition to transferring "permanent retention and usability," responsibility for continued data security (availability, confidentiality, and integrity) should also be transferred.

Response:
Once an agency has transferred a public record to the Digital Archives, the Digital Archives will take responsibility for maintenance of the record. Digital Archives adheres to all State and Federal statutory exemptions and restrictions.

Question: How does this section relate to those records with both a permanent retention period and an archival designation?

Response:
Agencies should consult the State and Local Retention Schedules regarding their specific requirements regarding records retention.
Agencies are encouraged to transfer their data to the DA as guided by the State and Local Records Committee to the DA.

Comment: This language seems to contradict language found in WAC 434–662–050 concerning migration of records. If this section means, "Data in the original format shall not be disposed of regardless of migration to a more current media," we would like clarification of the purpose of maintaining it in the original format if, "Archival copies of records maintained at the digital archives may not be backward compatible with the originating system."

Response:
Section 080 has been deleted. The requirements in the first two sentences have been added to section 040, under agency duties and responsibilities. The language in section 40 reads: An agency is responsible for a security backup of *active* records. A security backup must be compatible with the current system configuration in use by the agency.
The last sentence of section 080, requiring maintenance of records in their original format, has been completely deleted – it was in conflict with other sections of the proposed rules.

Question: If the original system is transferred as required in 050 then why is the State indicating that they may not be backwards compatible, if they are taking over the obligations?

Response:
Unless the data being transferred to the DA is a website, we do not use the originating system or application to display the data. The DA has created its own custom application to display the data. Therefore, it more than likely will not be backwards compatible.

Question: What about forward compatibility?

Response:

Because the DA has created its own custom application to display the data. It is probably not going to be forward compatible as well.

Section 090
Transmittal agreement for transfer of electronic records

Question: Will there be fees attached to the Transmittal Agreement?

Response:
There are no associated fees charged by the OSOS for executing the Transmittal Agreement. There are also no fees charged by the OSOS for transferring data to the Digital Archives(DA).

Question: Can we attain a template of the transmission agreement?

Response:
The DA would be happy to share the Transmittal Agreement with any interested agency. Please contact the DA directly to obtain a copy of this agreement.

Question: Item 2 on the list says 'Disposition Authority'. We use 'disposition authority numbers'. What is meant by 'disposition authority' in this instance? Should it be defined?

Response:
Disposition authority pertains to all records without regard to media (ie: paper or electronic. Each record series has a disposition authority number assigned by either the State Records Committee or the Local Records Committee and is found in one of these two published retention schedules. A retention schedule is a listing of types of records grouped by function (called records series), the minimum amount of time these records should be kept (called the retention period, usually listed in months or years) after the cut off event (such as end of year or date of document), and what can be done with the records once the retention period has been met (called the disposition). Two common dispositions are Destroy and Transfer to the archives (meaning the record has permanent value).

Question: Would like clarification on point 7. "Identification of any confidential information or record and the statutory authority for such confidentiality;" how would that work?

Response:
When an agency states in the Transmittal Agreement that a record or portion of a record is confidential, the DA needs the statutory authority identified that states the record is confidential. We can not just arbitrarily make a record confidential without identifying the statutory authority that supports the confidentiality.
When an agency identifies a record as a restricted access record, the Digital Archives will limit or restrict access to the record until a change is requested by the agency, or when 75

years have passed. Digital Archives adheres to all State and Federal statutory exemptions and restrictions.

Suggestion: Add "if participating" before "local government agencies" (appears twice).

Response:
The State Records Committee *and* the Local Records Committee clearly intend for their client agencies to work with the State Archivist to centralize, preserve, and/or transfer records to the State Archives.
Section 010 has been changed to indicate that electronic public records should be preserved for their minimum retention period for present and future access and/or are transferred to the Digital Archives. If/when any agency is no longer able to preserve an electronic public record; the record must be transferred to the Digital Archives.

Comment: We need more information on what metadata and 'other technical information necessary for ingestion …' is.

Response:
Metadata is synonymous with indexing fields.
An example of other technical information that may be needed is background database management systems.
Digital Archives staff members are available to answer questions and provide assistance to agencies.

Question: The method and frequency of record transmittal can be determined with the transmittal agreement. The number of records to be transferred cannot be determined unless there is a transmittal agreement for every transfer, which seems to defeat the purpose of frequency. Is the number of records more an approximation or expected range per transmission?

Response:
The number of records is more of an approximation. For example, when we get an initial dump from auditors it can be 500 gigs or more. It makes sense to move this data via hard drive. However, there monthly updates are much smaller and that data is transmitted via SFTP. The simple rule here is that for very large amounts of data, it only makes sense to transmit it to the DA via hard drive.

Comment: We interpret item seven to mean that agencies flag files that contain confidential information prior to sending them to the Digital Archives and that Digital Archives will not provide such files to the general public without review or redaction. The actual process for responding to requests from the public for confidential files from the Digital Archives is unclear.

Response:

When an agency identifies a record as a restricted access record, the Digital Archives will limit or restrict access to the record until a change is requested by the agency, or when 75 years have passed. Digital Archives adheres to all State and Federal statutory exemptions and restrictions.
Digital Archives will meet the obligations contained in chapter 42.56 RCW for any record in its custody.

Comment: In past discussions with the Washington State Archives a deputy state archivist confirmed that the items accessible on the state archive's electronic website were not reviewed for exemptions to the public records law. The deputy state archivist stated that the archives did not have the staff to review records for legal exemptions prior to release, and that the electronic archives released records to anyone asking to view them. This practice has been confirmed in a FAQ for the proposed Chapter 434-662 WAC rules recently circulated by the State Archives.

Response:
It is the responsibility of the agency to identify restricted access records. Digital Archives will make records available for public inspection in good faith if the transmittal agreement does not identify restricted access needs for that record.

Question: Will the DA deploy redaction features?

Response:
Currently the DA does not have redaction features on their website. The website just has search and display capability on it. We are looking at incorporating redaction features in other applications. We do not have a specific date that we expect to incorporate redaction into our applications.

Comment: In-house storage of public records better serves our needs. The ability to immediately call upon staff with particular fields of expertise and on the public records officer is paramount in protecting records from illegal release.

Response:
RCW 40.14.020 states: All public records shall be and remain the property of the state of Washington. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance with the provisions of this chapter. In order to insure the proper management and safeguarding of public records, the division of archives and records management is established in the office of the secretary of state. The state archivist, who shall administer the division and have reasonable access to all public records, wherever kept, for purposes of information, surveying, or cataloguing, shall undertake the following functions, duties, and responsibilities: …(2) To centralize the archives of the state of Washington, to make them available for reference and scholarship, and to insure their proper preservation; …

An agency that chooses to maintain its own records must do so to the standards contained in these proposed rules. If/when the agency can no longer maintain its electronic public records, it must transfer them to the Digital Archives.

Question: How will the archives manage citing the statutory authority as the nature of statutory rules change over time for records that have been transmitted?

Response:
The DA does not cite the statutory authority on their website. The statutory authority is cited in the Transmittal Agreement only.

Question: What if a portion of a message is confidential, but not the whole message?

Response:
When the DA ingests e-mail, we will not be displaying e-mail on our website to the public. We will be ingesting it into our database. Regarding Confidentiality the DA does have the ability to not display a title, an entire record series, a particular document type, a single field of meta data, or an image/images. Overall we support five different levels of locking.

Comment: This prescription is prohibitive and impractical for certain record types with unstructured or lengthy textual components, such as email, since the designation of what is confidential or exempt from disclosure is not always a clear-cut issue identifiable in advance—especially given the high volume of records involved.

Response:
Restricted access to electronic public records should be applied the same as restricted access to paper records. Public disclosure laws continue to change and are subject to interpretation; it is the duty of the records officer to be aware of, and abide by, current laws and practices regarding public disclosure. If a records officer releases a confidential record in good faith, they should not be found criminally liable. If a records officer is in doubt, they should contact the State Records Manager for assistance.

Question: Exemption requirements may change over time—how does the DA propose to ensure that current exemption requirements are consistently applied to records in the Digital Archives?

Response:
The DA uses the information in the Transmittal Agreement to apply exemption requirements. Each partner defines their exemption requirements in the MOU, and the DA applies those requirements to the partner's records. If the exemption requirements change over time, Digital Archives staff members will apply the changes.

Section 100

Media format for transfer

Suggestion: Add "or protocol" in the title after 'format'.

Response:
This suggestion has been adopted. The title for Section 100 now reads: Media format and protocol for transfer.

Suggestion: Delete specific technologies due to the rate of change.

Response:
In seeking balance between some agencies desire for specific examples to better understand the proposed rules and other agencies interest in streamlining and not dating the proposed rules, the sentence in question does both – it provides examples, but specifies the examples given are not an exhaustive list by stating "portable media formats *including, but not limited to* …" This allows for future technology to be included as new portable media formats are developed.

Comment: Currently, we don't have the ability to transmit our electronic records to your agency except for in the form of tape backups.

Response:
The Digital Archives accepts tapes. However, to retrieve information from backup tapes, the original system is needed. Digital Archives staff members will work with an agency to migrate information.

Question: Why does your agency need all the electronic information now instead of at the point of archiving information as we do with paper records?

Response:
In the future most data will be born digital. The Digital Archives(DA) already receives data from our county auditors that is born digital. Data should only be sent to the DA provided that it has archival, historical, and legal value. Please consult the retention schedule.

Comment: The media format and protocol of transmission should also be stated in the transmittal agreement, so section 100 is more a part of the transmittal agreement than something separate.

Response:
Section 090, outlining the transmittal agreement, *identifies* information that must be included in a transmittal agreement, including the media file format. Section 100 pertains to the media format and protocol for transfer of records and *explains* the format and *how to* transfer records. Section 100 is necessary to explain how to transfer.

Section 110
Metadata requirements

Comment: This section doesn't give enough information.

Response:
The following sentence has been added to specify what sufficient metadata includes: All transfers of electronic records to the digital archives must identify the name of the originating agency, the date of transfer, the records series, and other appropriate metadata as specified in the transmittal agreement.
Digital Archives staff members are available to answer questions or assist with transfer of records.

Question: What are the minimum requirements for metadata? Is there specific criteria? Is it listed or published somewhere? Will it be?

Response:
The minimum requirements for metadata depend on the record series that is being transmitted to the Digital Archives (DA). Currently, it is not listed or published. The DA prefers to work with the agency one-on-one when transferring there data to the DA. Please contact the DA directly regarding metadata requirements.

Suggestion: Add language: The digital archives will not accept electronic records that do not contain appropriate metadata as specified in the transmittal agreement, except for those stored for disaster recovery purposes.

Response:
Electronic records stored for disaster recovery purposes will be addressed in a forthcoming WAC written pursuant to the provisions of chapter 40.10 RCW.

Comment: Most software programs create standard metadata tags such as creation date, author, etc. However, some metadata tags are only created by profiling a document either manually or by an automated rule. This would be a new task for most local governments. It would be helpful if the minimum metadata fields required by the Digital Archives be listed in the WAC.

Response:
We agree. The following sentence has been added to follow the first sentence: All transfers of electronic records to the digital archives must identify the name of the originating agency, the date of transfer, the records series, and other appropriate metadata as specified in the transmittal agreement.

Suggestion: Sensitive information may need to use either sanitized or encrypted metadata so as to keep some or all of the confidential information secured. The metadata should include some designation for the security requirements of the data along with a description of the metadata encryption algorithm.

Response:
A sentence has been added specifying required metadata includes the name of the originating agency, the date of transfer, the record series, and other appropriate metadata as specified in the transmittal agreement. The transmittal agreement in Section 090 requires the identification of any access restriction.

Section 130
Fees

*This section has been deleted from the proposed rules. Responses to previously received remarks are provided only for clarification.

Comment: If the intent of this section was to indicate that the State Archives could collect fees for items that are public records, then the RCW quoted needs to be changed. If the intent was to indicate where funding came from, then the rest of the section needs to be re-written to indicate that.

Response:
The intent of this section *was* to indicate the State Archivist would collect fees from records requestors in accordance with the fee amounts established in other WACs. Archives staff members felt this was unnecessary language that is already covered in WAC 434-690-080.

Question: Would local governmental agencies be charged for copies of the records they sent to the State Digital Archives?

Response:
Per RCW 40.14.030 the local agencies that contribute records to the archives shall not be charged when they need copies of their records from the archives.

Section 140
Website management
Digital Archives crew and Russell

Comment: On an archival level web pages are generally considered a delivery mechanism not a record. This provision seems to value format over content. I would question the validity

of that premise in an archival context. If my agency were to apply current records retention periods to the records that currently appear on our web site, I would bet that less than half of those records would have archival or potentially archival value in the current approved retention schedules.

Response:
This section states that state and local government agencies must retain all web content in accordance with the approved retention schedules. As with records of all formats, only those designated as archival need to be transferred (by the means of "spidering") to Washington State Archives.

Comment: Our agency doesn't currently have the technology to address website management.

Response:
The DA has the tool to perform the spidering. The DA is continuing to look into to new technologies for spidering. The reason for this is that spidering is not the best technology to capture all the content with dynamic websites.

Question: We are outside the state (DIS) firewall. In reference to 662-140, will the Digital Archives program be able to "spider" our website, too?

Response:
As long as the website is a public facing website the DA will be able to spider it.

Suggestion: Because web sites are used to publish announcements to public and stakeholders, a more frequent spidering may be appropriate. The other method for this is to give agencies a means to signal that the web site needs to be tracked/copied. It may be necessary for the Digital Archive and each agency to have a transmittal agreement for the web site specifying the frequency of the spider's activity.

Response:
This suggestion appears to be based on an earlier draft of the WAC. The current wording of Section 140 appears to have addressed this suggestion.

Comment: Note that the term "spider" as used in Rule 140 is a verb, but as "spider" is defined in Rule 020, it is a noun, a thing, not an action.

Response:

We agree. The sentence has been changed to read: Pursuant to a transmittal agreement, the digital archives will ~~spider~~ use a software program commonly known as a spider to copy state and local government web sites that are determined to have archival value either annually, or more frequently.

Question: Would a word other than 'spider' be more appropriate to use?

Response:
We have replaced the verb "spider" with the word "copy."

Comment: There is a question as to whether locals will sign due to local security of systems. If ACCIS agrees, then it would be okay.

Response:
The provision in subsection (4) has been moved to Section 090, which pertains to the transmittal agreement. Moving the back-end database identification to the transmittal agreement allows agencies to negotiate terms that meet their needs.

Suggestion: Add the words "if participating" before each of the three references to "local government agencies."

Response:
Regardless of whether local government agencies are "participating" in transferring their archival records to Washington State Archives, the local government agency must retain all web content in accordance with the approved retention schedules.

Suggestion: We suggest that the "spider" idea be limited to public facing web sites only. Internal web sites may be protected in such a way that this would fail or look like a cyber attack. Also, some internal web sites may contain confidential electronic data and this process could pose a security risk.

Response:
We are not spidering intranet sites, only public facing websites.

Comment: As to the requirement of preserving web site contents, it is unclear whether the spidering of local government webs sites will be acceptable in lieu of local efforts to preserve such sites.

Response:
Local government agencies still must retain all web content in accordance with the approved retention schedules. As with records of all formats, only those designated as archival need to be transferred (by the means of "spidering") to Washington State Archives.

Comment: It is unclear whether local governments that do not want to otherwise utilize the other services of the DA can opt to utilize the DA only for spidering their web site content.

Response:
It is not necessary for our partners to use all of our services. They can use all or part.

Comment: Removes agency from decision making process regarding which web page posting have continuing value contrary to increasingly accepted NAA guidelines.

Response:
This section states that state and local government agencies must retain all web content in accordance with the approved retention schedules. As with records of all formats, only those designated as archival need to be transferred (by the means of "spidering") to Washington State Archives.

Suggestion: States "all web pages must contain Washington government information locater service (WAGILS) metadata tags." We have been working with DIS to develop something more in the lines with Dublin Core so possibly it should read "all web pages must contain the Washington State metadata set."

Response:
This suggestion appears to be based on an earlier draft of the WAC. The current wording of Section 140 appears to have addressed this suggestion.

Comment: This will require large increases in disk space on the web servers resulting in increased server costs. Depending on the configuration of the digital archive spider routine, it could have a performance impact on our web servers, especially as they continue to grow.

Response:
The DA only spiders twice a year. We also do it in off peak hours, so it is unlikely you would experience a performance impact on your web servers. I am not sure why you would require large increases in disk space, as the DA stores all of the spidering results at the DA.

Suggestion: It is unclear if the intent of this section is to capture *all* updates to agency web sites, regardless of how small or insignificant. Most agencies have more than one web page on their web site, with updates happening frequently, daily or hourly in some instances. It is not practical or feasible to expect agencies to archive their web sites every time an update is made. We recommend archiving web pages on a periodic basis (i.e., quarterly), with the understanding that some changes will not be included.

Response:
This suggestion appears to be based on an earlier draft of the WAC. The current wording of Section 140 which allows for the frequency of spidering to be determined as part of the transmittal agreement appears to have addressed this suggestion.

Suggestion: This section needs to better clarify if the Archives is interested only in unique web documents or everything published on the web.

Response:
This section states that state and local government agencies must retain all web content in accordance with the approved retention schedules. As with records of all formats, only those designated as archival need to be transferred (by the means of "spidering") to Washington State Archives.

Question: Some web sites will contain continuously updated information, such as weather reports, web cams, RSS article feeds, and other information typically coming from external sources. Should there be a metadata field identifying the fact that a web site is displaying externally produced information?

Response:
A website supplied by outside resources should already indicate its sources. There is no need to identify outside resources in an additional metadata field. Additionally, when the website is copied using spider software, the HTML page will be captured.

Comment: Requires WAGILS metadata tags that may be obsolete if DIS Metadata Tag Committee recommendations are adopted.

Response:
This suggestion appears to be based on an earlier draft of the WAC. The current wording of Section 140 appears to have addressed this suggestion.

Comment: Web records should only be archived if the content indicates that they are archival or potentially archival records.

Response:
This section states that state and local government agencies must retain all web content in accordance with the approved retention schedules. As with records of all formats, only those designated as archival need to be transferred (by the means of "spidering") to Washington State Archives.

Question: If an agency has their site hosted on an external server (like we do at DIS) would the proposed section require that DIS archive any hosted sites for the required two years for spidering? If not, and if we do not have an accessible Web server for spidering our archived sites, can Web sites be archived annually to other media (CD, DVD, USB drive, etc.) and forwarded to the Washington State Digital Archives?

Response:

The DA prefers to spider public facing websites semi-annually. The DA will have access to these websites provided that they are public facing. We prefer not to receive the websites on external media such as CD, DVD, USB, drive, etc.

Comment: Our agency as a whole has a very large and diverse web presence. The volume of web pages hosted on web servers facing the Internet is extraordinarily large and presents significant challenges and costs to include, in its entirety, as archive data for any period of time. Our agency's policy has been to assign value and a retention period to our web pages based on content and function of that content, not the tool though which the content is accessed.

Response:
This section states that state and local government agencies must retain all web content in accordance with the approved retention schedules. As with records of all formats, only those designated as archival need to be transferred (by the means of "spidering") to Washington State Archives.

Suggestion: The web management section should complement the forthcoming decision by the State Records Committee related to the General Schedule internet and intranet web records series. Also, there is one remaining reference to "memorandum of understanding" in this section which should be changed to "transmittal agreement."

Response:
The two draft records series for "Internet Web Sites, Agency" and "Intranet Web Sites, Agency" that were presented to the State Records Committee in November 2006 have not been proceeded with. This section states that state and local government agencies must retain all web content in accordance with the approved retention schedules. As with records of all formats, only those designated as archival need to be transferred (by the means of "spidering") to Washington State Archives. This suggestion concerning "memorandum of understanding" appears to be based on an earlier draft of the WAC. The current wording of Section 140 appears to have addressed this suggestion.

Comment: Currently, we have two new records series (which Adam Jansen approved) titled Internet Web Sites and Intranet Web Sites. They contradict what is written in this WAC.

Response:
The two draft records series for "Internet Web Sites, Agency" and "Intranet Web Sites, Agency" that were presented to the State Records Committee in November 2006 have not been proceeded with. This section states that state and local government agencies must retain all web content in accordance with the approved retention schedules. As with records of all formats, only those designated as archival need to be transferred (by the means of "spidering") to Washington State Archives.

Section 150
E-mail management

Digital Archives crew and Russell

Comment: Our agency does not currently have the technology to address e-mail management.

Response:
State and local government agencies that choose to conduct business transactions using email (thereby creating and receiving emails that are public records) are responsible for meeting their legal requirements for managing those public records in the same way that they are responsible for meeting their legal requirements to manage public records in other formats.

Suggestion: The language seems too specific. We suggest it be simplified.

Response:
The second sentence which references elected officials, agency directors, and other senior government officials has been deleted. The proceeding sentence now references elected government officials and public employees.

Suggestion: Add the word "State" before "elected officials."

Response:
This section applies to both state and local elected officials.

Suggestion: Delete the words "state and local" before "retention schedules."

Response:
The second sentence which contained the reference to the state and local retention schedules has been deleted.
Suggestion: We recommend clarification of the term "agency directors and other senior government officials" so that agencies know exactly which e-mails to preserve.

Response:
The second sentence which references elected officials, agency directors, and other senior government officials has been deleted. The proceeding sentence now references elected government officials and public employees. Decisions regarding which e-mails should be preserved should be based on the content of the message.

Comment: A definition of 'senior government official' is not provided, and as such, we cannot determine how this requirement should be applied. Does this requirement really intend that ALL e-mails of such officials be considered archival, including transitory e-mails with no retention value?

Response:
The retention schedules indicate which record series have been designated by the State Archivist as being "archival" and which record series have shorter retention periods. It is the role of the agency's records officer to assist their agency in implementing and applying the approved retention schedules. Washington State Archives' records management section and Regional Archivists are able to provide advice to the agency's records officers.

Comment: Not all e-mail of elected and agency officials are archival in nature, requiring permanent retention.

Response:
The retention schedules indicate which record series have been designated by the State Archivist as being "archival" and which record series have shorter retention periods. It is the role of the agency's records officer to assist their agency in implementing and applying the approved retention schedules. Washington State Archives' records management section and Regional Archivists are able to provide advice to the agency's records officers.

Question: How exactly is an elected official at whatever level suppose to know what emails are archival or historical?

Response:
The retention schedules clearly indicate which record series have been designated by the State Archivist as being "archival". It is the role of the agency's records officer to assist their agency (including elected officials) in implementing and applying the approved retention schedules. Washington State Archives' records management section and Regional Archivists are able to provide advice to the agency's records officers to assist them in their role.

Suggestion: Second sentence changed to read: The e-mails of all government officials and employees are subject to the records retention periods and disposition promulgated by the state and local records committees. E-mails falling into a record series designated as archival must be retained permanently.

Response:
The second sentence which references elected officials, agency directors, and other senior government officials has been deleted. The proceeding sentence more comprehensively references elected government officials and public employees and clarifies that their e-mails are subject to records retention periods and that any and all e-mails with archival value must be retained.

Comment: I agree with the State Archivist's assessment that current rules (and retention schedules) already cover executive-level correspondence, and with the Digital Archivist's insofar as it relates to executive e-mails. However, there is not very much published guidance

from OSOS-Archives/RM regarding what agencies need to do with *everyone else's* e-mail, be it correspondence, project file-related, ephemera, etc.

Response:
It is the role of the agency's records officer to assist their agency in implementing and applying the approved retention schedules. Washington State Archives' records management section and Regional Archivists are able to provide advice and training to the agency's records officers to assist them in their role.

Comment: WAC 434-662-150 contains the statement "[e]-mail is a public record subject to all of the laws and regulations…" This statement is inaccurate. While it is true that email is a record, it would only be a "public record" if it otherwise met the definition of "public record" in WAC 434-662-020 that defines a public record as "[a record] containing information relating to the conduct of government or the performance of any governmental or proprietary function …" Furthermore, this statement that emails are public records (seemingly as a rule) runs contrary to the Secretary of State's previously provided guidance about email contained in *Wash. Secretary of State, Local Government Agencies of Washington State: Records Management Guidelines*, P. S-62. In that publication, the State Archivist states[1]: "Individual E-mail messages may be public records with legally mandated retention requirements, or may be information with no retention value. E-mail message are public records when they are created or received in the transaction of public business and retained as evidence of official policies, actions, decisions, or transactions. Such messages must be identified, filed and retained just like records in other formats."

Response:
The first sentence has been replaced with the following sentence: Emails created and received by any agency of the state of Washington in the transaction of public business are public records for the purposes of RCW 40.14 and are subject to all of the laws and regulations governing the retention, disclosure, destruction and archiving of public records.
The new sentence more accurately conveys the message that e-mails pertaining to the transaction of public business are public records, rather than the original first sentence which inaccurately and too broadly described all e-mail as public records.

Comment: I acknowledge there is disagreement regarding 'best practices' for managing e-mails, but the demand for solid direction from state and local agencies is only growing with time, and the Digital WAC draft doesn't include much to address this need.

Response:
Washington State Archives' records management section and Regional Archivists are able to provide advice and training to the agency's records officers to assist them in their role of assisting their agency in managing their public records (including emails).

[1] This quote is taken from the latest MRSC manual entitled *Public Records Act for Washington Cities and Counties.* It appears that the version which has, until recently, resided on the State Archives website is presently unavailable so I was unable to personally verify this quote.

Comment: Agencies should also consider the substantial legal liability that they could incur as a result of keeping all of their non-executive e-mails in perpetuity, rather than managing them in accordance with the retention schedules. Someone who offers to keep all of their e-mails forever, offering near-infinite storage without also counseling best records management practices, might not be doing them a favor in the end.

Response:
Agencies must retain all their public records (including email) for the appropriate minimum retention period as specified in their retention schedules approved by the records committees. Records that are not designated as archival or required for anticipated or ongoing litigation or public disclosure requests should be destroyed at the end of their minimum retention period.

Comment: The proposed rule does not acknowledge that Microsoft E-mail is not searchable or retrievable unless it is brought back into the software that created it (Outlook). Attachments are not searchable in Outlook. Some attachments are too large.

Response:
The proposed rules do not specify a particular hardware or software that relate to a particular vendor's system; the rule is not intended to solve individual software and hardware challenges. The DA intends to propose solutions with individual transmittal agreements. The Digital Archives(DA) will be responsible for coming up with the process to transmit and retain search ability on e-mails. We will be starting with Outlook E-mail first and then working with E-mail from other applications such as GroupWise, and Lotus Notes. We currently have Auditor Data from multiple recording systems Anthem, Oncore, CRIS++, and it is searchable on our website. There is metadata associated with each record, and the image of the e-mail will be served up in a .DJVU format. This metadata contains such information as Date of E-mail, Sender, To, and Subject Field. There will potentially be the ability to do a keyword search over the body of the e-mail as well. Regarding attachments, they will also be served up in a .DJVU format. As for the search ability of the attachments, that is something the DA is still working through.

Question: How do we transmit archived e-mails to the digital archive and retain search capability?

Response:
The Digital Archives will be responsible for coming up with the process to transmit and retain search ability on e-mails. We will be starting with Outlook E-mail first and then working with E-mail from other applications such as GroupWise, and Lotus Notes. We currently have Auditor Data from multiple recording systems Anthem, Oncore, CRIS++, and it is searchable on our website. There is metadata associated with each record, and the image of the e-mail will be served up in a .DJVU format.

Question: Is there a standard search capability requirement for e-mail archiving?

Response:
Currently the DA is exploring giving the user the ability to search on the following fields for e-mail:

From
To
Subject
Date
Keyword search on the body of the e-mail

This is just the initial proposal for search capabilities; more may be added at a later date.

Question: Do we just store all required e-mail with no relational search capability, or does there need to be a relational search capability?

Response:
The DA is responsible for extracting e-mail from multiple systems such as GroupWise, Lotus Notes, Outlook, etc., They are not asking you to store additional relational search capabilities than is already in the above mentioned e-mail systems.

Question: Will there be a state standard for e-mail archiving method?

Response:
The DA expects standards for e-mail will evolve with technology. The Transmittal Agreement will adapt to changes.

Question: Will the digital archive handle any type of e-mail archiving, or is there a standard in mind?

Response:
The DA will be responsible for handling e-mail from multiple different systems, such as GroupWise, Lotus Notes, Outlook, etc.,

Questions: We use GroupWise for our email system, each user has their own "archives" how will the State be able to work with these varying systems, what protocols will be in place to ensure security during transfer, what about smaller local governments that use AOL or MSN accounts for employees?

Response:
The DA will need to work with many different e-mail systems such as GroupWise, Lotus Notes, Outlook, etc., While the DA does not have the answers as to how to deal with all of these systems, they have dealt with a similar problem regarding Auditor Data. Auditor Data

comes from many different recording systems. The DA currently imports data from these systems and allows it to be searched from the DA Website.

Comment: The proposed rule would prevent agencies from printing an electronic record for retention purposes without permission from the records committee. It is unclear how permission would be attained since any given electronic record most likely would not pertain to just one record series but many.

Response:
This comment appears to be more related to Section 040 than Section 150. Section 040 does not prevent agencies from printing an electronic record for retention purposes without permission from the records committee, it prevents agencies from destroying the original electronic record and the consequential lost of an integral part of that electronic record (its metadata). The records committees would assess each request on its merits as they do with all disposition requests.

Comment: This rule appears to be in conflict with records management practices that separate the value of the data contained within the system from the actual system which transmits it.

Response:
This section requires that emails that are public records are retained for their minimum retention period and those emails that are designated as archival are transferred to the Washington State Archives. It is unclear what in the wording of this section causes this apparent conflict. It is the records that are being transferred to the archives, not the email systems.

Comment: This section sets up a different management status for specific individuals that are in direct conflict with other legally approved retention periods for specific e-mail record content.

Response:
This section requires that emails that are public records are retained for their minimum retention period in accordance with approved retention schedule and those emails that are designated as archival (including those of elected and senior officials) are transferred to the Washington State Archives.

Comment: Singling out the email of elected and other high officials for special treatment in 434-662-150 does not appear to have support in RCW 40.14. Such officials are cc'd and otherwise sent emails on many mundane matters. Indeed, in the case of smaller local governments, the elected officials may involve a majority of email traffic of the entity. The RCW contemplates that the retention and the archival value of material is based upon its content, not its sender or recipient.

Response:
The second sentence which references elected officials, agency directors, and other senior government officials has been deleted. The proceeding sentence more comprehensively references elected government officials and public employees and clarifies that their e-mails are subject to records retention periods and that any and all e-mails with archival value must be retained. Non-archival e-mail with mundane content would be subject to disposition at the conclusion of the retention period.

Suggestion/Question: The need to preserve original format or some digitally searchable alternative should probably be repeated here. That preservation lays a considerable cost and functional burden on the information technology implementers. Yes, that cost should perhaps have been part of the initial implementation, but it usually has not been, so how does an agency or an agency's information technology budget bear that cost now?

Response:
State and local government agencies that choose to conduct business transactions using email (thereby creating and receiving emails that are public records) are responsible for meeting their legal requirements for managing those public records in the same way that they are responsible for meeting their legal requirements to manage public records in other formats. An important aspect of an agency meeting their legal requirements is ensuring that they are adequately funding the compliance with those legal requirements.

Suggestion: On email, why not step back and instead offer a service that will secure permanent records and offer a solution for both permanent and temporary e-mails? Essentially, offer offline (maybe near line is the more correct term) storage to all emails that have passed their immediate business need (2 years or so?) with the functionality to classify documents and apply retention periods. There could be a fee for messages not yet properly classified by series, but also the ability for a limited number of users to access their jurisdiction's emails to assign them to proper series, delete transitory messages, and otherwise perform typical records management functions.
Benefits:
Authentic records would be preserved for their full retention period with all metadata.
SOS would be serving customers on this matter in both the records management and the archival arena instead of only the latter.
Creators would still be responsible for classification and there would be a fiscal incentive to do that classification.
The Digital Archives would be performing a first-of-its kind service at the statewide level.

Response:
Quote from the Public Records Act - Model Rules
"While many of the e-mails could be destroyed when no longer needed, many others must be retained for several years. Indiscriminate automatic deletion of all e-mails after a short period may prevent an agency from complying with its duties under the Public Records Act. An agency should have a retention policy in which employees save retainable documents and

delete nonretainable ones. An agency is strongly encouraged to train employees on retention schedules. … The unlawful destruction of public records can be a crime. RCW 40.16.010"